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THE LIFE AND CORRESPONDENCE  
OF  
PHILIP YORKE  
LORD CHANCELLOR HARDWICKE

IN THREE VOLUMES  
VOLUME II

*Works by the same Author :*

**Letters of Princess Elizabeth of England,**

Daughter of George III and Landgravine of  
Hesse-Homburg, written for the most part to  
Miss Louisa Swinburne. T. Fisher Unwin,  
London, 1898

**A Note-Book of French Literature, 2 vols.**

Blackie & Son, 1901, 1904





LORD CHANCELLOR HARDWICKE  
FROM A PORTRAIT BY ALLAN RAMSAY







THE LIFE AND CORRESPONDENCE  
OF  
PHILIP YORKE  
EARL OF HARDWICKE  
LORD HIGH CHANCELLOR OF  
GREAT BRITAIN

by

PHILIP C. YORKE, M.A. Oxon.,  
Licencié-ès-Lettres of the University of Paris

And a man shall be as an hiding-place from the wind, and a covert from the tempest; as rivers of water in a dry place, as the shadow of a great rock in a weary land.

Isaiah xxxii. 2.

O could I flow like thee, and make thy stream  
My great example, as it is my theme;  
Though deep, yet clear; though gentle, yet not dull;  
Strong without rage, without o'erflowing full.

DENHAM, *Cooper's Hill*.

VOLUME II

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# TABLE OF CONTENTS

## VOLUME II

### CHAPTER XIX

#### FOREIGN AFFAIRS TO THE DEATH OF HENRY PELHAM

	PAGE
<i>Narrative.</i> End of the Austrian Alliance—Election of the King of the Romans—Further diplomacy—The Chancellor's outlook . . .	I
<i>Correspondence.</i> Duke of Newcastle's policy—Henry Pelham's opposition—Quarrels and disputes—The Chancellor's views—Subsidies in time of Peace—Excessive demands upon Great Britain—Duke of Newcastle's reply—Duke of Newcastle's foreign policy—Election of the King of the Romans—Chancellor on American insubordination—On the Prussian Alliance—Conduct of the Court of Vienna—Lord Granville's enthusiasm—The King's separate negotiation . . . . .	9

### CHAPTER XX

#### DOMESTIC HISTORY 1748—1754

<i>Narrative.</i> Bedford goes into opposition—Prince of Wales's opposition—Duke of Cumberland's opposition—Attacks upon the Government—Troubles in Ireland—The Irish Pension List—Progress and Reform in England—The Jew Bill—The Chancellor's speech for the repeal—Lord Hardwicke's Marriage Act—Opposition in Parliament—Pamphlets—Fox's attack upon the Chancellor—Severe reprisals—Fox's "mean submissions"—Meaning of this hostility—Character of the measure—Ecclesiastical jurisdiction suppressed—The Chancellor created an Earl—Death of Henry Pelham . . . . .	39
<i>Correspondence.</i> Archbishop Herring declines Primacy—The Chancellor's remonstrances—Narrative of domestic Factions—Duke of Cumberland—Chancellor's rebuke of Chief Baron Idle—Joseph Yorke aide-de-camp to the King—Duke of Newcastle's complaints—The Chancellor as peacemaker—Newcastle and the King at Hanover—The Chancellor's advice—Henry Pelham's complaints—Successor to the Duke of Bedford—The Chancellor to judge between them—Continuance of the disputes—Plot to assassinate the Chancellor—Newcastle's wounded feelings—Resignation of the Duke of Bedford—Newcastle out of favour—Causes and origin—Hostility of Duke of Cumberland—Charles Yorke's defence of his Father—The King's satisfaction—Lord Kildare's memorial—The Chancellor on the Jew Bill—Legal Status of the Jews—Opposition in the country—The Chancellor's Irish policy—The Chancellor on the Marriage Act—Queries answered . . . . .	79

### CHAPTER XXI

#### FAMILY HISTORY 1742—1754

<i>Narrative.</i> The Chancellor's home life—Charles Yorke's rise—His correspondence—His character—Philip Yorke—Joseph Yorke—At Paris—Minister at the Hague—John and James—Lord Anson—The Chancellor's daughters . . . . .	138
<i>Correspondence.</i> Election expenses—Illness—Charles Yorke's visit to Dover—Joseph Yorke's Paris correspondence—His promotion—Chancellor d'Aguesseau—Montesquieu—Duke of Newcastle at the Hague—Montesquieu's advice to Charles Yorke—The fire at Lincoln's Inn—Charles Yorke's escape—Joseph Yorke in love—Yields to counsels of prudence . . . . .	160

## CHAPTER XXII

## PITT AND FOX

	PAGE
<i>Narrative.</i> The Chancellor's preference—Fox Minister and not Pitt—Causes and results—Alliance of Fox and Pitt—Pitt renews opposition—Evil consequences . . . . .	187
<i>Correspondence.</i> Pitt's attitude—Correspondence with Lyttelton—His "simple plan"—The Chancellor's attitude—Newcastle First Lord of the Treasury—The Chancellor's letter to Pitt—No neglect of Pitt's claims—Pitt's letter to the Chancellor—Intrigues of Fox—Alliance of Pitt, Fox and Legge—The King's hostility to Pitt—Advancement of Fox—The King's displeasure with Newcastle—The Chancellor defends him—Negotiations with Pitt—His interview with the Chancellor—Favourable appearances—Pitt, Fox and Legge threaten opposition—Pitt's interview with Newcastle—Insists upon an "office of advice"—"Determined and negative"—Duke of Newcastle's alternatives—The Chancellor's observations—Advice—Fox made Secretary—Hostility of Leicester House—Pitt in favour with the Princess . . . . .	201

## CHAPTER XXIII

THE WAR 1754—1756 TO THE LOSS OF MINORCA AND  
THE FALL OF THE MINISTRY

<i>Narrative.</i> The war precipitated—Opposition to the German treaties—The Chancellor's speech—Project of the Militia—The Chancellor's speech—The French attack Minorca—Preparations of the Government—Byng's failure—Consequences of the reverse—Fox deserts—Pitt necessary—Conference with the Chancellor—Fall of the Ministry . . . . .	255
<i>Correspondence.</i> Peace or War—Colonel Yorke and the King—The French project of Invasion—Colonel Yorke's criticisms—Pitt's attacks on the Government—Byng's letters—Byng's failure—Hostility of Leicester House—Murray claims his peerage—The Chancellor's support—Colonel Yorke "gives up" Byng—Lord Bute—Unpopularity of the Ministers—Attacks upon the Chancellor—Charles Pratt—Dutch contraband trade—Bute made Groom of the Stole—Legal promotions—Fox resigns—Pitt necessary—The King consents—The Chancellor has interview with Pitt—Pitt's final negative—Has recourse to Lady Yarmouth—The Chancellor's narrative—Newcastle decides upon resignation—Tributes to the Chancellor—His resignation of the Great Seal—Retirement of Lord Anson . . . . .	281

## CHAPTER XXIV

## THE TRIAL AND EXECUTION OF ADMIRAL BYNG

<i>Narrative.</i> The twelfth article of War—Lord Hardwicke's firmness—Proceedings in the Lords—Byng's crime—House of Commons inquiry—Lord Hardwicke organizes the defence—Conduct of Pitt . . . . .	340
<i>Correspondence.</i> Mallet's pamphlet—Lord Hardwicke's instructions—Proceedings in the Commons . . . . .	353

## CHAPTER XXV

## THE INTERREGNUM

<i>Narrative.</i> Pitt's change of front in office—Adopts the policy of the late Ministers—Dismissed—Conferences and factions—Hardwicke settles new Cabinet—His generosity—Character of the new Administration . . . . .	360
--	-----

<i>Correspondence.</i> Hardwicke's visit to Pitt—His advice—Pitt supports continental measures—Lord Hardwicke attacked—Pitt's moderation—Letter from Clive—Rumours of Hanoverian neutrality—Schemes for a new Government—Lord Hardwicke on the situation—Pitt's failure—The Great Seal—Hardwicke's advice to Newcastle—The Waldegrave-Fox fiasco—Hardwicke's commission from the King—Settles the new administration—Lord Anson reinstated—Pitt's ill-humour—Encouraged by Lord Hardwicke—Congratulations . . .	373
---	-----

## CHAPTER XXVI

## LORD CHANCELLOR 1737—1756

<i>Narrative.</i> Origin of equity jurisdiction—Various powers—In law—In equity—Limitations—"Certainty" and "Repose"—Force of precedents—Chancery reports—Lord Hardwicke's reporters—Absence of official reporters—Relations with Common Law Courts—Lord Hardwicke's influence—Importance of uniformity—Large discretionary powers remaining—Relief against Law and Statute—Leading cases— <i>Hervey v. Aston</i> — <i>Le Neve v. Le Neve</i> — <i>Garth v. Cotton</i> — <i>Stapilton v. Stapilton</i> — <i>Chesterfield v. Janssen</i> — <i>Ward v. Turner</i> — <i>Onychund v. Barker</i> — <i>Penn v. Baltimore</i> —Other principal cases—Avoids constitutional decisions—The peace of families—Protection of infants—Moral considerations—Slavery—Enforcement of decrees—Sole Law Lord—Appeals to the Lords—Finality of Hardwicke's decrees—Appeals from Scotland—Lord Hardwicke's capacity—Influence of Roman Law—Generalisation—Creative work—Transformation of equity—Methods of reasoning—Complaints of the Law—Failure of justice—Charge of delays—Contemporary testimony—Mistaken modern criticisms—Hardwicke's and Eldon's administrations—Absence of congestion under Hardwicke—Separation of Equity and Law—Later amalgamation—Inconveniences arising from separation—Abuses among officers of the Court—Lord Hardwicke's orders—Lord Hardwicke's influence—The Law the Bulwark of Liberty—Lord Hardwicke's bearing in Court—Delivery of his decrees—Multitudes to hear him—Lord Mansfield's eulogy . . .	413
<i>Correspondence.</i> Correspondence with Duncan Forbes—Scottish legal reforms—House of Lords and the Scottish Judges—Appeals from Scotland—Remonstrance to Walpole—Appeal case of Gordon of Park—Appeal from an offender—Appointment of Justices of the Peace—Appeal for protection—Lord Kames's treatise on equity—Separation of Common Law and Equity—Discretionary powers of the Chancellor . . .	532

## CHAPTER XXVII

## FAMILY HISTORY 1754—1760

<i>Narrative.</i> Lord Hardwicke's position—Public duties and responsibilities—Exercise of patronage—Life at Wimpole—Old friends—Lady Hardwicke—His generosity—Simplicity of his private life—Lord Royston and Charles Yorke—Sir Joseph Yorke—John and James Yorke—Lord Hardwicke's happiness—Family bereavements . . .	556
<i>Correspondence.</i> Church patronage—Domestic events—Corporation of Dover—Birth of a son to Charles Yorke—Death of Mrs Charles Yorke—Charles Yorke's grief—Death of Lady Anson—Marriage of James Yorke . . .	582

## LIST OF ILLUSTRATIONS

Lord Chancellor Hardwicke, from a portrait by Allan Ramsay, with the kind permission of Sophie, Dowager Countess of Hardwicke

*frontispiece of vol. II.*

Facsimile of the last entry in the Chancellor's judicial note-books, from the original in the Hardwicke MSS . . . . . to face p. 338.

## LIST OF ERRATA

P. 26 par. 1, l. 2, *for* Grimaldi *read* Grimaldi [Grimaldo].

P. 152 note 4, *for* Bourget *read* Bourguet.

P. 213 note \*, *for* [Lord Granville] *read* [? Lord Granville].

P. 262, par. 2, l. 3, *omit* approved.

P. 401 note \*, *for* in such passion *read* in such a passion.

P. 430, par. 2, l. 3, *for* Hervy *read* Hervey.

P. 511, par. 2, l. 13, *for* solid *read* substantial.



## CHAPTER XIX

### FOREIGN AFFAIRS TO THE DEATH OF HENRY PELHAM

THE Peace of Aix-la-Chapelle, which, superficially regarded, appears to be nothing but a truce, or a return of the contending powers, after the struggle, to their former status, really marks the beginning of a new period in the history both of Great Britain and of Europe. At home the Peace had finally destroyed the last, lingering hopes of the Jacobites in Scotland. While Great Britain and France retired apparently from the contest with equal honours, the former had in reality emerged in a position of marked advantage. The trade of France had been practically destroyed, while that of England was firmly established, and now increased by leaps and bounds. The French navy fell into decadence, while that of Britain, under the energetic administration of Lord Anson and the Pelham ministry, appeared after the war in unexampled strength. The finances of France were irretrievably ruined by the waste of war, extravagance and official mismanagement, while in England Henry Pelham, immediately upon the conclusion of hostilities, found no difficulty in reducing the interest on the national funds from 4 to 3 per cent. The stock indeed was quoted at a price actually higher than its present value<sup>1</sup>. In the Island Kingdom all departments showed signs of a new animation. The busy hum of increasing industry, activity and prosperity could be heard rising on all sides; while in France, under the crushing weight of taxation and misgovernment, trades languished, business stood still, and the whole national life began to settle down in gloom and stagnation.

<sup>1</sup> The 3 p.c. stock was quoted at 101 and was said to have touched 109½ (Coxe's *Walpole*, ii. 78, 89; H. Pelham's speech in the House of Commons, *Parl. Hist.* xiv. 576). The high price of the Government stock at this time was of course not entirely due to the high character of the security, but also to the great increase of capital and to the restricted market, compared with our own times, for investment.

These great changes and their full significance, though noted, were not fully understood by contemporaries, engaged without ceasing in the heat and turmoil of the struggle. It was some time, moreover, though not blind to the faithlessness and increased estrangement of Vienna, before they perceived the full extent of the great diplomatic reconstitution which now took place.

Immediately upon the conclusion of the Treaty, the Duke of Newcastle, while still abroad, unfolded before his fellow ministers a large scheme of uniting the European powers against France by an elaborate system of alliances, backed up by extensive British subsidies, of which the corner stone was a firm alliance with Austria. To this his brother, Henry Pelham, intent on financial economies and domestic reforms, ever neglectful of exterior developments and whose system of administration almost omitted the province of foreign policy, replied with a direct negative and refusal<sup>1</sup>, though subsequently he was led step by step into an unwilling and peevish acquiescence in his brother's plans.

The utility, and necessity of some scheme of foreign alliance, in order to enable Great Britain to withstand the power of France and to prepare for the renewal of the great struggle, which could not be long in coming, can scarcely be denied; and the most ambitious schemes of the Duke of Newcastle, entailing, as they did, a constant activity and interference in continental politics and the expenditure of large sums of money, constituted, with all their drawbacks, a policy infinitely preferable and far less dangerous to the interests of Britain than Henry Pelham's obstinate, complacent and ostrich-like oblivion of the great hostile forces arrayed at the gates. He seemed to forget that domestic progress and reforms, nay, even existence as a nation, are only attainable by a firm and vigilant policy pursued abroad and by unceasing preparation for war. In particular, the Duke showed a superior wisdom and foresight in 1751 in stoutly resisting his brother's wholesale diminution of the naval forces from 10,000 to 8,000 men, in which he obtained the support of Pitt; and next year the service was accordingly restored to its former strength<sup>2</sup>.

It was not therefore the Duke of Newcastle's general policy abroad that was mistaken, but the particular measures taken to promote it. It was at the first start vitiated and rendered

<sup>1</sup> pp. 9 sqq.

<sup>2</sup> *Walpoliana*, by the second Lord Hardwicke, with the Supplement, 20; Coxe's *Pelham*, ii. 141 sqq.; Walpole's *George II*, i. 17; *Letters*, iii. 32.

ineffectual by the alliance with Austria, whose inconsistency and uselessness as an ally had been amply shown and who now, under the guidance of Kaunitz<sup>1</sup>, was about to break away definitely from the "grand alliance" with England and Holland, and to concentrate all her efforts and forces on the recovery of Silesia with the aid of France. Moreover, it would have been wiser probably to have given subsidies, if granted at all, in time of war or at least with a definite object<sup>2</sup>, rather than during a peace to secure general co-operation; and the fact that the treaty now made with Bavaria in 1750 for 6000 infantry at £20,000 a year, supported by Pitt and opposed by Henry Pelham, and that with Saxony at £22,000 a year in 1751 for the same number of men, were in 1756, at the outbreak of the war, and when alone they could prove of advantage, no longer in force, shows the futility and extravagance of the system<sup>3</sup>.

But the Austrian alliance, besides being the corner stone of the "grand system," was also the cardinal point of Hanoverian policy, as being the chief obstacle to the growing power of Prussia; and a further great scheme was now in July and August 1750 set on foot by the King and the Duke of Newcastle, of subsidising the German electors to obtain the election of the Empress's son, the Archduke Joseph, as King of the Romans, thus assuring to him

<sup>1</sup> Anton Wengel v. Kaunitz, b. 1711, one of the ablest and most experienced statesmen of the day, directed Austrian diplomacy for more than 40 years. His policy was the recovery of Silesia, the consolidation of the German provinces of Austria and the restoration of Austrian preponderance in Germany. In these schemes the Italian provinces and the Netherlands held relatively an unimportant position. Prussia was the great object of attack with the aid of France, while England and Holland were of little use as allies. A clear sign of the new system and of the disruption of the old alliance was the refusal of Austria any longer to maintain the Barrier Treaty of 1715, by which the fortresses most exposed to French aggression in the Netherlands were defended jointly by Austrian and Dutch forces, paid for by Austria. See p. 15; H. 8, ff. 20, 125; Waddington, *Louis XV et le Renversement des Alliâncés*, 127.

<sup>2</sup> See the elder Horace Walpole's able speech on this subject, *Parl. Hist.* xiv. 1137, and his views, H. 243, f. 151, Coxe's *Lord Walpole*, ii. 307.

<sup>3</sup> Cf. however the second Lord Hardwicke in *Walpoliana*, Supplement, 20: "Mr Pelham was no friend to subsidies in time of peace; it was much against his inclination, and to gratify the late King and his brother that we voted those two moderate ones to Bavaria and Saxony in 1750. In this point the writer of these *ana* presumes to be of a contrary opinion, and to think pacific subsidies will sometimes prevent a war, and always enable you to begin one with advantage. Late events seem to have made this demonstration; but undoubtedly, unless the interest which engages an administration to give them is a weighty and important one, the money had better be saved. The affair of the King of the Romans was not an object for this country to be a principal in; but to have kept the monarch of Berlin our friend after the peace, or made an active ally of the Czarina, what sum ought we to have grudged!" See also D'Argenson's *Memoirs*, October 15, 1751, who considered the treaty with Saxony a decided blow to the influence of France.

the eventual succession to the imperial dignity. "Whatever objection," Henry Pelham wrote, "I have to subsidising treaties, if the King can bring about the actual election...for £20,000 per annum for 6 years, no one will say that it is not a purchase cheaply made and that the great end, when obtained, is national<sup>1</sup>." Once or twice success seemed almost within the Duke's grasp. He told the King "that he had made an Emperor; that if he could make a King of the Romans too, it would be the greatest honour to him in the world": and his Majesty replied, "And that of my own proposing without being asked<sup>2</sup>." These brilliant imaginations, however, were fated to remain unrealised. The King of Prussia did his utmost to obstruct the measure, the Empress herself showed a supreme indifference, and the Electors affected misunderstandings and one by one raised their price. The Chancellor and Henry Pelham, who at first had thought well of the project, when the scheme expanded, entailed larger expenditure and promised less success, regarded it with disfavour; but the Duke, as he became further involved in the negotiations, strained every nerve to secure the election in order to save the King's credit. "Things are gone so far," he wrote to the Chancellor, entreating his and his brother's consent to a further subsidy for the Elector Palatine, "that if the thing is now dropt or should miscarry, the King's credit abroad will be totally lost as well as the reputation of his servants...; and I am afraid also of such consequences with regard to the future proceeding in foreign affairs and to the system that will, and must, be then adopted, as may greatly entangle and affect the close of his Majesty's reign<sup>3</sup>." The inevitable, however, had to be confronted and the unfortunate Duke was obliged to witness the total failure of his schemes and the ruin and collapse of "the great system, the great object of my life in foreign affairs<sup>4</sup>."

In subsequent years this impracticable project was again prosecuted with a perseverance and energy, worthy of a better cause. The Duke of Newcastle even made appeals to France and to Prussia for support and continued, zealous and indefatigable, to pursue his will-o'-the-wisp, undeterred either by failure or by the freezing indifference of the Queen Empress who, drawing steadily towards France, was by no means eager to incur obligations to England at the expense of further concessions in all

<sup>1</sup> Coxe's *Pelham*, ii. 379.

<sup>2</sup> *Ib.* 340, N. to H.

<sup>3</sup> *Ib.* 430.

<sup>4</sup> *Ib.* 121; and below, pp. 25 sqq.

directions, and who herself urged the suspension of the project as one not worth the trouble it was causing. The King himself created special difficulties, negotiated separately as Elector of Hanover, and sought to extract some *douceur* from Austria as the price of his support, and to gain from the Elector of Cologne the bishopric of Osnaburg for the Duke of Cumberland, or to get instead a larger subsidy for Russia. Referring to the unfortunate project of the election, he now told the Duke: "You have this thing much at heart. I have it not so much." Finally, he created delays in order to have reason for a still longer stay in the beloved Hanover, advised Austria secretly to limit her contributions, and in short, as the Duke pointed out, provided Vienna with good reasons for withdrawing from the whole transaction<sup>1</sup>.

In 1752, accordingly, the Duke accompanied the King back to England with the great object unachieved, greatly to the satisfaction of Henry Pelham, but much to his own disappointment and vexation. The comedy was complete, and the absurdity of this unlucky negotiation clearly seen, when Austria some years later, in 1764, now no longer an ally but a declared enemy, obtained the famous election without the slightest difficulty and without the least assistance from England or from any foreign power. "What shall we say," wrote the second Lord Hardwicke, "of these German treaties at which the Duke of Newcastle took so much useless and not unable trouble, but that they were all paper and pack thread.... Though ably managed by his Grace it was absurd to engage in it on our own bottoms and the time [and money] employed therein might have been better spent in other pursuits<sup>2</sup>."

The Chancellor, placed midway in friendship between the two brothers, was similarly situated in his political opinions. He was not in sympathy with Henry Pelham's impracticable and perilous narrow views, which the latter had inherited with his office from Sir Robert Walpole, and which the Chancellor had vigorously withstood when maintained by that minister; while from his correspondence it would appear that he was far from sanguine in expecting any great results from the Duke of Newcastle's "forward" policy abroad<sup>3</sup>. In a long letter to the Duke on August 30, 1749, he had expressed his dislike of the proposed subsidies in time of peace as a new system of politics, never attempted at the conclusion

<sup>1</sup> pp. 35 sqq.; Coxe's *Pelham*, ii. 230, 350, 450; H. 65, f. 29.

<sup>2</sup> H. 63, f. 206; H. 64, f. 195.

<sup>3</sup> pp. 25-6, 29, 32; N. 36, f. 145; H. 62, f. 226; H. 64, ff. 28, 34.

of any former great war, which would develop into a perpetual burden, and render subsidies in time of hostilities still higher than at present,—a prospect especially disadvantageous at that time on account of the recent increase of the national debt. The great fault in Sir Robert Walpole's administration had been the vast expenditure in time of peace, while nothing had been done to diminish the public obligations<sup>1</sup>. Former experience of the German princes was no encouragement in such a plan, and the subsidies would probably not be spent upon their troops at all, but frittered away on a foolish profusion out of keeping with their resources; while it was only too likely, after their payment during peace for several years, that when war broke out, they would raise the market or perhaps abandon Britain altogether—an anticipation which was actually realised<sup>2</sup>. To a proposal in 1753 for granting an additional subsidy for the maintenance of the barrier in the Netherlands, he objected that "no Chancellor of England would venture to put the Great Seal to such a convention<sup>3</sup>." The scheme for the election of the King of the Romans, which he allowed, in common with Henry Pelham and Pitt, to be a desirable object at first, he regretted when the difficulties to be surmounted and the expense incurred were seen to be so considerable, but felt bound to support with Henry Pelham the Duke's last attempt to effect the election, for fear of the consequences of failure<sup>4</sup>.

He attached far more importance, in the struggle with France, to the attitude and support of the greater European powers, Prussia, Spain and Russia, and to the attachment of Holland by some kind of defensive union<sup>5</sup>. British policy, in his view, should keep to broad, large lines, should include alliances with these States but ignore "princes that were not powers<sup>6</sup>," and stand clear

<sup>1</sup> Cf. the D. of N. to H. Pelham July 1/12, 1752, repeating some remarks of the King, that "He [Walpole] managed the money matters very ill; he did not indeed give money abroad, but he gave it away liberally at home; that he was a great man, he understood the Country, but that with regard to money matters, your brother does that, understands that, much better.... I told him, I had often heard you lament that in Sir R. Walpole." Cox's *Pelham*, ii. 440.

<sup>2</sup> pp. 3, 17, and 104 n. Cox's *Pelham*, ii. 410. He does not appear to have taken any part in the debate, in January 1752, on the Saxon subsidy in the Lords, notes of which in his handwriting are quoted in *Parl. Hist.* xiv. 1175.

<sup>3</sup> N. 159, f. 65, also ff. 156 and 180.

<sup>4</sup> pp. 25-6, 33; H. 62, f. 226; H. 75, f. 126; *Parl. Hist.* xiv. 802; H. 62, f. 232.

<sup>5</sup> pp. 20 sqq. and vol. i. 659.

<sup>6</sup> This phrase was one of the elder Horace Walpole's. See his letter to the Chancellor December 18, 1750 (H. 243, f. 151).

of all petty German disputes. A wise activity was shown by the government in watching jealously the attitude of Prussia, who at this time was once more estranged from England and inclined to France. The treaty between Prussia and France of 1741 still existed, and Frederick took the side of France in the colonial war in North America. His opposition was the chief cause of the failure of the Duke of Newcastle's negotiation. He had further shown his hostility by sending to Paris, as Prussian Ambassador, the Jacobite Keith, and in receiving in the same capacity from the French the rebel Lord Tyrconnell. The dispute between the Elector of Hanover and Frederick for the possession of East Friesland assumed a dangerous shape; and Frederick, on the plea of British depredations upon Prussian vessels, seized forcibly a mortgage of £250,000 upon Silesian mines, being a debt incurred originally by the Emperor Charles VI in 1734 and now the property of British subjects. At this time, moreover, he was supporting a Jacobite plot to keep England well employed at home and which, if successful, might have enabled him to add Hanover to his dominions<sup>1</sup>. The French evacuation of St Lucia, St Vincent and Dominica had not been carried out according to the Treaty. Tobago, declared neutral by the treaty of 1684, had been occupied, and in 1753 secret attempts were made to fortify Dunkirk. All these instances of bad faith drew strong remonstrances from the British Government, and in the latter case with immediate effect<sup>2</sup>. Successful means were employed to frustrate the designs of France upon Sweden and to effect an understanding with Russia, of which the Chancellor had been a strong advocate since 1745. In 1750 Great Britain, though this was opposed by Lord Hardwicke, who feared to excite the suspicions and hostility of Frederick<sup>3</sup>, acceded to the alliance between Austria and Russia, but not to the secret engagements between these two powers for the recovery of Silesia; and in 1753 the Treaty was further confirmed by a British subsidy<sup>4</sup>. On October 5, 1750, also, a commercial treaty was concluded with

<sup>1</sup> Coxe's *Pelham*, ii. 226, 279, 460; above, vol. i. 538. See also Frederick's letter to the Young Pretender after the failure of the Rebellion, expressing his sympathy and admiration, and his desire to give assistance. *Hist. MSS. Comm.*, Lord Kenyon, 474.

<sup>2</sup> In 1753, Lord Holderness refused to send his dispatches to Paris in the French language, as had been the custom hitherto, and the French minister, after remonstrances, was finally obliged to receive them in English. This incident is probably not without some significance. R. Waddington, *Louis XV et le Renversement des Alliances*, 53.

<sup>3</sup> p. 24; Chesterfield's *Letters* (Bradshaw) 1157.

<sup>4</sup> *Buckinghamshire Correspondence*, i. 22; H. 66, ff. 30, 39, 42, 47.

Spain on favourable conditions, but leaving the right of search as it had existed before the outbreak of the war<sup>1</sup>.

To support these alliances and schemes of foreign policy, the maintenance of a strong navy was essential. This, in the Chancellor's opinion, was the great point, and no expense should be spared on this object. "France knows that her trade and colonies must always be in the power of the superior force at sea<sup>2</sup>."

In the new world, the great struggle for supremacy went on unchecked by treaties and diplomatic developments, and both governments dispatched troops to the scenes of dispute. In North America, the great French design of uniting their colony of Louisiana with Canada, by a line of forts, and of cutting off the New England settlements from the interior, was strongly resisted but with doubtful success; and in 1754 the French succeeded in founding the settlement of Fort Duquesne on the Ohio, as well as other outposts. In Nova Scotia the contest regarding the frontiers still continued. In 1749 the government settled a body of nearly 4000 discharged soldiers in the colony and dispatched a naval force thither in 1751<sup>3</sup>.

In India Clive, who forwarded to the Chancellor accounts of his proceedings, gained the important victory of Arcot in 1751, and began the series of successes and conquests which were soon to annihilate the schemes of Dupleix and establish British supremacy permanently in that quarter<sup>4</sup>.

To all these great enterprises the Chancellor gave his warmest support; and the breadth of his view is exemplified by his disapproval, about this time, of the proposal for the taxation of the American colonies from which, together with the Duke of Newcastle, he dissuaded Henry Pelham<sup>5</sup>.

<sup>1</sup> Coxe's *Pelham*, ii. 114 sqq. It was in the debate on this agreement on January 17, 1751, that Pitt, now in office, made his celebrated recantation and apology for the part he had played, when in opposition, in urging on the war with Spain, on account of the practice of searching. <sup>2</sup> p. 22.

<sup>3</sup> *Louis XV et le Renversement des Alliances*, by R. Waddington, chap. i.; Coxe's *Pelham*, ii. 113. "If you do not act with vigour, and support what you have done, and our right to the extended boundaries of Nova Scotia," wrote the D. of N. to his brother June 9/20, 1750, "you may not only lose that province but...endanger all your northern colonies, which are inestimable to us. If you do, you may run a risk of a rupture with France. But I think that is to be run." *Ib.* 345. According to Walpole, the naval expedition was supported by the Chancellor, the D. of N. and H. Pelham with others, and opposed by Bedford and Sandwich. *George II*, i. 62, 81.

<sup>4</sup> See also H. 244, ff. 179-183, letter of the Chancellor in reply to Lord Holderness concerning the project of settlement between the French and British East India companies.

<sup>5</sup> "The people of England," writes the second Lord Hardwicke in *Walpoliana*,



But his outlook was often largely restricted and modified by the paramount necessity of finding a working compromise between antagonistic policies and between incompatible tempers, without which the whole scheme of government, both foreign and domestic, would inevitably have collapsed. "The great difficulty," he writes to Colonel Yorke, "is how to keep this administration together on any tolerable terms<sup>1</sup>." The wise counsels which range over the whole field of foreign and domestic affairs, were not the only contribution by the Chancellor to the advance of Britain towards empire at this time; for it was the constant exercise of his calm judgment and moderating influence which alone maintained the balance between the Duke of Newcastle's forward ambitions and Henry Pelham's narrow fears, and which rendered possible activity and energy at the extremities of the body politic, by keeping the heart strong and sound.

## CORRESPONDENCE

[On the <sup>6th</sup>/<sub>17th</sub> November 1748 (N. 32, f. 275; H. 62, f. 86), the Duke of Newcastle sends a long letter to the Chancellor on the policy which, he considers, should be pursued to secure the peace and consolidate the alliances with England. Above all, the navy must be kept up to maintain the superiority of England at sea; then an understanding must be created with the Prince of Orange, and confidential relations must be cultivated with Austria, in which Russia might be included. If this alliance were established, it would, in all probability, attract many princes of the empire, and especially the support of Saxony which, added to Poland<sup>2</sup>, was now of great weight. Certain forces should be maintained by each ally, the King's contribution being restricted to the upkeep of a strong

Supplement 20, "always applaud a bold active minister, when success attends his measures. Mr Pelham acquired their esteem by the opposite conduct. He too had a scheme laid before him, not long before his death, for an American tax, and with the additional plea on its side, that there was the strongest probability we should be compelled to engage in a new war for our colonies. He asked his private secretary [John Roberts] (from whom I had the anecdote) one day for the paper, saying, 'I must look it over with my brother and the Chancellor.' He returned it in a few days with this significant remark; 'Here, Roberts, you may put up the paper where it will not be called for again; we have talked it over, and it will not do.' (See also above, vol. i. 89.) A few copies of *Walpoliana* were privately printed by the second Lord H., the supplement on H. Pelham being still rarer than the tract itself. See the copy in the Grenville collection, Brit. Mus. and Brydges, *Restituta*, iv. 370.

<sup>1</sup> p. 87.

<sup>2</sup> Augustus III, Elector of Saxony, was also King of Poland.

navy. If measures were not taken in time, the alliances would moulder away till they were totally dissolved. At any rate it was absolutely necessary for the ministry to agree upon some connected system in foreign policy.]

*Right Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 77.]

GREENWICH PARK, *November 7th, 1748.*

MY DEAR LORD,

I send you back the letters which you were so good to send me. I have read them over, but shall make no observation upon them; they speak for themselves. I shall only say to your Lordship that as great a minister as the Duke of Newcastle thinks himself, I am of opinion that he does not quite understand the Duke of Cumberland himself upon whom he rests his whole. I had a letter from my brother on Saturday; he complains most loudly of the letter I wrote to him in a hurry on Friday fortnight; it was upon the receipt of the three very extraordinary letters I had from him that night<sup>1</sup>....I intend to write to Mr Stone to-morrow an ostensible for his Grace, for I find I can't express myself to him honestly, and at the same time to his satisfaction. I call God to witness I have meant him well, and as to familiarity or difference of opinion, I have ventured upon that with the Duke of Cumberland ten degrees beyond what I have done with my brother, and have not offended His Royal Highness, tho' the son of my King. I shall certainly be at the Regency to-morrow; I don't often miss my duty there; for I think, if we have failed in anything, it has been in giving too little attention to the forms of our government there. I don't know whether it is not right that your Lordship should be apprised of my firm resolution to be no ways concerned in helping the Austrians to the £100,000<sup>2</sup> they seem to have set their hearts so much upon receiving, and my brother his upon granting. You will make your own use of what I say, but, believe me, no reasons nor no authority, I have yet heard quoted, can bring me to it. I am, my dear Lord,

Yours most affectionately and faithfully,

H. PELHAM\*.

*Lord Chancellor to the Duke of Newcastle*

[N. 32, f. 294; H. 62, f. 93.]

POWIS HOUSE, *November 8th, 1748.*

MY DEAR LORD,...

Your Grace has long known how much every altercation between you and your brother grieves me. Those incidents have,

<sup>1</sup> See above, pp. 675-6.

<sup>2</sup> p. 683 n.

\* N.B. My Father in his life time never shewed one of these letters to his family, and was in the right. H.

for a good while past, given me more anxiety, and broke more of my rest than any other incidents in business. Forgive me for not now entering into the merits. His letter (whereof you enclose a copy) is certainly the letter of a man then out of humour. But pray (my dear Lord), reflect coolly on things as they then stood. It was writ in a great haste, and instantly upon receiving three letters from your Grace *at once* by the same packet boat, all writ in the same style and with some sharpness. Their all coming together was indeed by the accident of contrary winds, but this circumstance made them strike the deeper. Possibly your Grace may think I speak here a little feelingly and partially, that *mutato nomine de me fabula narratur*. But I really think it is a circumstance that may excuse some sudden warm expressions, and I believe you had no reason to be dissatisfied with the greatest part of the long letter, which was the real answer, and went on the Tuesday following. Your Grace says, *you were in hopes that the Peace would have set all right*. I do most sincerely hope and believe it will; and for God's sake, let us all contribute our parts to it, especially in that quarter, which is the most material of all to yourselves and to this administration. I preach the same doctrine to him more freely. Your Grace's opinion is certainly wise and just, that the true way to preserve the Peace is by supporting the system of the old alliance, and maintaining our marine in great strength and figure. But as to the first, it is really thought by well intentioned persons that the preservation of the old alliance is not to be brought about by yielding to the unreasonable demands or schemes of our allies, and I know your Grace thinks so too. But I must acquaint you in confidence that your brother has told me more than once, "that it is his firm resolution to be no way concerned in helping the Austrians to the £100,000, and that no reasons nor any authority, that he has yet heard quoted, shall bring him into it." I thought it but just to let your Grace know this: and you have seen what H.R. Highness says on the same subject...

Ever yours,

HARDWICKE.

*Right Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 79.]

ESHER PLACE, November 14th, 1748.

MY DEAR LORD,...

I have read it [*i.e.* the Duke of Newcastle's sketch of foreign policy] over twice, and considered it as well as I am able to think of things of that nature. You may be sure it is not at all agreeable to my notions, I mean the new modelling or negotiating with any of the great Powers at present, further than to assure them we desire peace and quietness, and that, if they will not personally meddle with us, we do not desire to disturb any of them, but will abide by our treaties and perform the several engagements we have entered into, whenever we are properly and legally called upon. Indeed, my Lord, we want rest, and so does all Europe, both friend and foe. The Duke of Newcastle's thoughts must go further than he discloses in his letter, or else they will avail nothing<sup>1</sup>. We cannot give either Holland, or the Empress Queen, a greater testimony of our affection and good faith than we have done; and if our able and active ministers are to do no more than tell them so, I believe they may as well stay at home.... Believe me, my dear Lord, all this proceeds only from his active spirit; he wants to be doing, and the many interested parties he has been lately with have found out that, and of consequence flatter him into their own measures. He always had a partiality and regard for the late Lord Stanhope<sup>2</sup>. I know he thinks no minister has made a great figure but him in the two reigns. He will therefore imitate him as far as he can, and I doubt, if he is not checked by somebody, will bring himself, if not his country, into the same distress that fertile, but well intentioned, lord did before him. I chose to write this rather than talk upon it, that you may consider it well and prevent the ill consequences, if you apprehend the same that I do. It is your Lordship only that can do it; for I am supposed to have original principles and ancient prejudices, that influence me against sense and reason. What I say now is merely for the sake of my brother; for I don't fear the people of England being drawn again in haste into such a scrape, as they have been in lately. I should hope also my brother would not talk of the King of Prussia, whatever he thinks, in the way he writes to your Lordship. The generality of mankind will say the only way to preserve the old system, or to recover it, in case it is now so broke to pieces that one can scarce give it a name, is to renew our alliances with the House of Brandenburg, and not declare them desperate, till by proper means

<sup>1</sup> The event proved this to be true.

<sup>2</sup> James, first Earl Stanhope (1673-1721), commander of the British forces in Spain, 1708-1810, when he took Minorca but was forced to capitulate at Brihuega; afterwards Secretary of State and First Lord of the Treasury; he accompanied George I to Hanover and controlled the negotiations abroad with great success.

they have been sounded whether they will reunite with us or not.... I am with the truest respect and attachment, my dear Lord, most faithfully your servant,

H. PELHAM.

*Duke of Newcastle to the Lord Chancellor*

[N. 32, f. 310; H. 62, f. 95.]

UTRECHT, November <sup>14th</sup>/<sub>25th</sub>, 1748.

MY DEAR LORD,

[Expresses his hopes that his scheme of foreign policy will be supported, and continues:] But I own freely to you, my dear Lord, that every letter, which I receive from my brother, shows to me clearly that he will be against taking any one necessary measure that may secure the great end that I would propose. The constant mention of the necessity of Civil List economy as well as public, the indifference, or rather the objection, to the sending any man of rank and experience to the Hague, where all business that relates to foreign measures must be transacted, and lastly the disposition, which I find in the Duke of Cumberland and from him to be in England, to do nothing that can possibly *displease* my Lord Sandwich, which the sending Sir T. Robinson<sup>1</sup> for a month or two to the Hague, it is supposed would do; all these circumstances put together, and your Lordship's *absolute and long silence* upon the most material part of my long letter, viz; the necessity of my having ministers in my own province<sup>2</sup>, who would not think, or say, they were wiser than myself; and, as I am now the responsible Secretary, I had almost said the successful one, that I should have the support of my friends in that situation; these circumstances, I say, put together, give me too much reason to fear, that a jealousy that I would engage the King and the nation in extravagant or expensive measures, may make it wished [by H. Pelham] that Lord Sandwich should be thought to have great merit in the Peace now concluded, and thereby be kept as a balance against those, whose notions are not so much approved of, the use that was formerly made of Lord H[arrington] and Lord C[hesterfield].... I think H.R.H. could never press so much my seeming to forgive and forget everything that Lord Sandwich has done, if the necessity of it had not been strongly insisted upon in England. I shall certainly give Lord Sandwich no reason to complain of me. I shall not *wantonly* ever talk of the part he has acted. I shall support and encourage him in the great employment<sup>3</sup> which, I may say, I procured him. But I can never, as an honest man, say he made the Peace; because I am in my conscience convinced that, if his measures had been taken, they would have defeated it; and because I think the talking that language is injurious to one poor man at least, I mean Sir T. Robinson.... I had the pleasure to find H.R.H.

<sup>1</sup> See vol. i. 260 n.

<sup>2</sup> See vol. i. 633.

<sup>3</sup> First Lord of the Admiralty.

more than ever satisfied with your Lordship, and convinced of your great weight and ability in every branch of the King's service.... I found the usual goodness to me, and a perfect agreement in the great object I propose, tho' an apprehension that the means now suggested might at present be objected to in England. I read my letter of the 6th to your Lordship to H.R.H. Weigh that well, and you will see the principle is all I contend for at present, and the employing men, willing and able to execute that measure in the proper time. If this principle is not now avowed, allow me, my Lord, to prophesy that you will be soon alarmed in seeing things tend to that fatal indolence and indifference with some mixture of resentment and ill will, which produced the strict union with France in 1725, which I have so often heard your Lordship condemn as the source of all our misfortunes<sup>1</sup>.

Ex illo fluere, ac retro sublapsa referri

Res Danaum, fractae vires, aversa deae mens.

You will justly say to me, *Pars magna fui*. I own it, and am therefore determined never to be so again, having seen the ill consequences of it. What an appearance will it have, my Lord, how will Europe be astonished and our old friends alarmed, when they shall see only Resident Keith at Vienna and Resident Dayrolle at the Hague, and the Duke of Richmond ambassador in France, and my Lord Chancellor's son secretary to the embassy?...

The King and the Duke tell me my brother has great and national views now in his thoughts; no less than the reducing the whole debt of the nation to three per cent., and the keeping the current expense within the land and malt [taxes], and paying yearly a million of the sinking fund to the lessening the debt of the nation. 'Tis a great and glorious design, worthy of him.... I will assure him two things, that this will make my happiness in public affairs complete; and secondly, that all that I can possibly do to contribute towards it shall be done, by never proposing any measure that does not appear to me to be absolutely necessary, that can any way delay the execution of this great design....

Ever my dearest Lord, most unalterably Yours,

HOLLES NEWCASTLE.

[The Duke writes again on November <sup>19</sup>/<sub>30</sub>, 1748, from Helvoetsluys (N. 32, f. 325; H. 62, f. 101), still in ill humour with his friends at home. He had not received any draft of the King's Speech; certain orders for restitutions, according to the treaty, had not been sent; another letter had arrived from Henry Pelham] such as, I believe, no one brother, that has the least affection or regard for the other, ever wrote before. But I am so used to these

<sup>1</sup> The Treaty of Hanover between England, Prussia and France, whereby the long peace between France and Great Britain was inaugurated by Walpole. Cf. below, pp. 29-30.

things that they make less impression. When I come to England, I will put the whole secret correspondence between my brother and me into some discreet, impartial, unengaged common friend's hands; and I will never pretend to judge again, if for *sincerity, affection, temper, consistency in measures and reason*, supported by *facts*, the fault does appear on my side; and this is my justification....

[On December 28, 1748 (H. 75, f. 83), Henry Pelham tells the Chancellor that he has had an interview with his brother at Claremont.] I commanded myself as well as you could wish me, though my brother said many provoking things to me. My concern is for him and him only, being determined myself to have nothing to do in this peevish quarrel one way or the other....

*Col. the Hon. Joseph Yorke, at Paris, to the Lord Chancellor*

[H. 7, f. 21.]

PARIS, *Feb: 25th*  
*Mar: 8th*, 1749.

...To convince your Lordship how much the French Ministry have deceived themselves with false hopes of drawing England into a convention with them, since first the negotiation was begun at Aix-la-Chapelle, it will be sufficient to tell you in what style St Severin talked on his return from the Congress. He declared that he did not build his reputation on the making of the Peace; that he would allow it to be called a good one or a middling one, or even branded with the name of infamous; but he founded his glory, as he said, on having sow'd the seeds of dissension between the Courts of London and Vienna, and having made an irreparable breach between them....

*Lord Chancellor to the Duke of Newcastle*

[N. 33, f. 346.]

POWIS HOUSE, *July 26th*, 1749. At night.

MY DEAR LORD,

I have been prodigiously vexed and mortified at the accident<sup>1</sup> which happen'd this forenoon at Kensington, and which, as your Grace truly said, proceeded from the want of a particular attention, which ought to have been had. But really, when one has so many various things to apply one's attention to, as I have, and the occasions of exerting this particular attention so seldom arise, as they do to me, one cannot be sure that one may not, at some moment or other, be off one's guard. That there may be no danger of this for the future, I herewith return to your Grace a packet of

<sup>1</sup> It does not appear to what this refers, but it is probable that the Chancellor in speaking to the King had inadvertently touched upon some topic of which he was not supposed to be cognisant.

those letters without so much as opening their envelopes; and I humbly beg that no more of them, nor any extracts of them, may hereafter be sent to me; and then they will be confin'd, as they ought to be, to those hands only, for which the King intends them. I hope your Grace's dexterity will be able to give some turn to this accident that may prevent any ill consequences arising from it; or if not, I am ready to take any blame upon myself, since there it ought properly to lie. I am, my dear Lord,

Ever yours,

HARDWICKE.

[On August 25, 1749 (N. 34, f. 69; H. 62, f. 126), the Duke forwards to the Chancellor a "very private" letter, in which he expresses his disappointment at the refusal of Denmark to join the proposed alliance, and attributes the failure to gain that state to the absence of principle in foreign policy and to negotiating too late. Now was the time to concert some definite plan, since France was at present obliged to maintain peace. He deprecated, moreover, the ministerial decision to refuse subsidies in time of peace.]

*Lord Chancellor to the Duke of Newcastle*

[N. 34, f. 83; H. 62, f. 134.]

WIMPOLE, August 30th, 1749.

MY DEAR LORD,

I sit down to answer the very private letter with which your Grace was pleased to honour me on the 25th instant. I confess myself extremely incompetent to the task; but as you have given yourself so much trouble to lay before me your sentiments relating to the system of foreign politics, proper to be pursued by Great Britain in this conjuncture, it would ill become me to neglect doing my part in return for so great a mark of your Grace's confidence.

I beg leave to begin with a circumstance with which your Grace concludes, I mean what the King told you upon this subject,—*The Chancellor is strongly with you*; a comfort, which you are pleased to say, you never had from me. As this may seem, (tho' not intended), to carry an implication, that to make my court in the closet, I had avow'd an opinion there which I had disclaim'd elsewhere, I do most sincerely assure your Grace that I never did it, and am incapable of it. My audiences are very rare, and I am far from wishing that they should be more frequent; but whenever they happen, I think it my duty not to profess an opinion to his Majesty, which I do not avow to his servants, who are consulted in



secret affairs, more especially to your Grace, to whom my attachment has ever been most cordial, confidential and without disguise. I know very well what his Majesty referr'd to. When I had the honour to wait upon him the day before I came out of town, which was but for a very short time, the failure of the Danish negotiation was occasionally mention'd. I expressed my concern for the disappointment and said I was much of opinion for it, which your Grace knows to be true. This was the whole; and no mention was made or hint thrown out, either then or at any other time, of a general scheme for giving subsidies, or of giving a subsidy, to any other power.

Having very faithfully related this fact, I come now to the systematical part of your letter; and as to your Grace's opinion of the present system and views of France, I verily believe it is in general well founded, particularly as to their design of restoring and raising their marine at any rate. If in any other part I may seem to differ from you, I beg to be understood to do it with that deference, which becomes an ignorant person, to one fully inform'd and possessing a comprehensive knowledge of the whole, and rather by way of throwing out hints for your consideration, than declaring an absolute opinion, even to bind myself\*.

Your Grace in speaking of the miscarriage in Denmark says: "The true cause is that the principle of supporting the continent at any expense, in time of peace, has been so decried, that no one, who is of another opinion, dar'd propose this or any other opinion *in time*."...It seems to me to be owing to three causes:—her minister being sold to France, the subsidy offer'd by France being much greater than yours, said to amount to £100,000 per annum, and the convenience, which the King of Denmark imagines he shall find (whether truly or falsely is not the question), in the cession of the Prince Successor of Sweden's rights in ducal Holstein, upon which it appears that King has been taught by his ministers to lay great weight<sup>1</sup>. If these were the causes, the effect would have been the same, let your propositions have come never so early.

As to the principle of giving subsidies to Powers on the continent in time of peace, I beg leave to submit a few things to your consideration, some of which are *general*, and others are *particular*.

\* The deference and diffidence with which Lord H. generally gives his opinion to the D. of N. is very extraordinary. H. [The cause was no doubt to avoid giving offence by differing in opinion.]

<sup>1</sup> Adolphus Frederick of Holstein, heir-presumptive to the throne of Sweden, renounced his claims to Schleswig and Holstein for certain equivalents.

As to the first—it is a new system of politics, not practised after either of the former great wars, and more difficult now to be introduced, by reason of the prodigious increase of our debt.

The Republic of Holland, in her present distressful state, is utterly unable to bear any share of them with us.

The subsidies given in time of war are increased in a monstrous proportion beyond what they were, either in King William's or Queen Anne's war; for even the two Empresses, the greatest Powers in the alliance after his Majesty, are become subsidiary.

If you carry it into execution and make it an avow'd system to give subsidies in peace, they will become perpetual and as much expected as the grant of the Civil List at home.

With regard to the administration, what was it that brought the chief clamour and the chief difficulties upon Sir Robert Walpole's administration from well intention'd people? Was it not the vast expense created in time of peace, and instead of making use of that advantage to lessen the national debt, the going on to increase it?

But your Grace supposes that "the national debt may be put in a way of being lessen'd by the reduction of interest to three per cent., even in the next session of parliament, and very little money will be wanted for subsidies within that time."

I must take leave to doubt a little whether that laudable scheme can be effected so soon<sup>1</sup>. I heartily wish it may; and admitting it, what material good consequences can follow from it, if measures of considerable expense are entered into immediately afterwards? In order to supply those, you must either take more from the sinking fund, which will stop one principal effect of the scheme, or you must begin borrowing again and create a new credit, and that will soon raise your interest to the height it was at before.

But who are the *particular* powers to whom it may be proper to grant subsidies in time of peace?

I presume not the Empress Queen nor the Empress of Russia, and that neither of those powers would descend so low as to ask it in time of peace.

The others are the King of Sardinia and the Princes of Germany....

<sup>1</sup> Mr Pelham's resolutions were carried on November 28, 1749, but the reduction of interest was spread over several years, the 4% being reduced to 3½% in 1750 and 3% in 1757.

Would it be right to give a subsidy in time of peace to a Prince [*i.e.* the King of Sardinia] whose situation and family conduct has always been such that, whatever may have pass'd before, they have taken such a part in the breaking out of a new war as their particular interest seem'd *then* to require, and have sometimes been on both sides in the same war? In such a case, what secure tie could arise from giving a small subsidy in time of peace?...

The Empire must be allowed to be a very great and respectable body, but is so disjointed and divided, from want of real authority and influence in their head, and by reason of territorial and family disputes amongst themselves, that the experience of above half a century has shewn little strength can be expected from them. In the last war, which of those Princes shew'd any vigour or from which of them did any material assistance arise, except from his Majesty on one side, and the King of Prussia on the other? The Hessians, tho' levied, paid and fed by English subsidies for many years, left us, almost as soon as the war began, from a particular family object then played up<sup>1</sup>. And the Saxons never did any material service; scarce engag'd in the battle with the King of Prussia, soon after made their match with France and accepted a subsidy from that Court<sup>2</sup>.

The remembrance of this conduct will suggest a doubt to the minds of men, how far the giving small subsidies to the German Princes in time of peace will secure them to your side, when a war shall break out. It will be doubted whether your money will really be applied to keep up troops, or rather to supply a vanity and profusion unequal to their own revenues. It will be apprehended that, when a new war breaks out, they will raise the market upon you, and having received small subsidies for doing nothing, will demand the larger when they are to enter upon service. It will be apprehended also, from the example of the Court of Cassel, that if, at such a juncture, either France or Prussia should hold out to them some particular points of family or territorial interest, or of support against the House of Austria (which

<sup>1</sup> The Landgrave William VIII of Hesse, after having hired out 6000 of his soldiers to England in 1743, acknowledged the Elector Charles of Bavaria as Emperor and delivered to him for another subsidy 3000 men, on the condition only that they should not fight against their fellow countrymen in the British service. F. Münscher, *Geschichte von Hessen* (1893), 411.

<sup>2</sup> The Austrians and Saxons were defeated by the Prussians at Kesselsdorf near Dresden on December 15, 1745; the Treaty of Dresden was made 10 days later and on January 11, 1747, the Elector of Saxony's daughter was married to the Dauphin.

has been the object of their jealousy, ever since the Treaty of Munster and the war which gave rise to it<sup>1</sup>), such a temptation would get the better of past obligations.

Your Grace argues that, because France gives subsidies in peace, England ought to do the same; and enforces it by saying that the former has gone a good way already towards securing the powers of the continent by subsidies. I don't know any instance of this, except the prolongation of her old subsidies to Sweden and Denmark; for the latest intelligence is that she has refus'd to prolong that to Saxony. But won't the argument from the example of France be thought to prove too much? France keeps up her armies of 100 or 150 thousand men in time of peace. Can England do the like? The answer will be, in both cases, want of ability, as well as from the degree of strength and extent of your country, as from the nature of your government.

Your Grace says very judiciously that "some system ought to be found, some alliance or party in Europe made, which may prevent our being dependant upon France and enable us to make a stand."

This is undoubtedly right in general; but as to new alliances, I am not sufficiently master of the old ones to judge in what particulars they want amendment and additions. I believe we are already engaged in all the guarantees and defensive alliances with our old allies that can be invented, and have taken reciprocal guarantees from them to ourselves, so that scarce anything seems to remain besides subsidiary engagements.

If any effectual measures could be entered into with the great Powers for preserving the peace and securing ourselves against events, (of which your Grace is the best judge), it would certainly be very desirable. When I speak of the great Powers, I mean our old allies, the Emperor, the two Empresses and Holland. Possibly it may be said that the Emperor and Empress Queen will not come into your measures, unless you engage some of the lesser Powers by subsidies. I don't doubt they will attempt this; and I think Count Fleming<sup>2</sup> in his letter of the <sup>18th</sup>/<sub>20th</sub> August has already begun it; for he advises Count Brühl<sup>3</sup> to suggest that point to the Court of Vienna, and then, he says, his Court may hope to mend

<sup>1</sup> The 30 years' war, concluded in 1648.

<sup>2</sup> Saxon minister in England, whose letter had evidently been intercepted.

<sup>3</sup> Count Heinrich von Brühl, Polish and Saxon minister of state.

their market here, or to that effect. But, notwithstanding that, if you adhere, the Court of Vienna will not lose your support for want of complying with it.

I cannot help observing in this place, how strongly it has appeared of late in Count Fleming's correspondence, that he writes up the scheme of giving subsidies with a constant eye to the situation and necessities of his own weak, extravagant and impoverished Court. This makes me take everything I read in him with grains of allowance; and I will add one thing more upon this head, which I will say to no mortal but your Grace, and beg you would not mention it to anybody. I have my fears that the giving a subsidy to the King of Poland now, in time of peace, may be liable to a particular invidious imputation of being done with a sinister view to enable him to pay the interest, at least, of his great debt to the King as Elector of Hanover, for which it is no secret that there has been much pressing.

As to the Republic of Holland, it is certainly deplorably low at present. If any advice or reasonable assistance could be given to raise them, to enable them to become once more a Power in Europe, it would undoubtedly be worth trying, especially for restoring their marine. No adequate succedaneum for this can be drawn from the Princes of Germany.

Another demand is plainly coming upon us, and that pretty fast. I mean a demand for assistance towards putting the Barrier into a state of defence. That this is reasonable, I am far from saying; nor do I pretend to foretell how it can be done. But it will be thought by many to be a much more material object for Great Britain than securing a few of the German Princes. Till what is called the Barrier is restored to some condition of defence, it is really no Barrier. If they remain in this state, this will be one of the greatest temptations to that Power [France] to begin a new war, when she is ripe for it; for she may immediately, with little trouble or expense, march two armies into Holland.

The next great point is to keep up our Marine, and that to the height, as your Grace very justly expresses it, and in this I fully concur. I think it is the great point of all; for I am persuaded that one principal view of France in making the Peace, when they did it, was to give time to restore and raise their's. I am therefore clearly of opinion that no expense should be spared upon that head, not only for keeping up and increasing the number of ships, but also for securing and having in readiness a proper number of

seamen, for want of which our Fleet has been at some times almost useless. Nothing will tend to keep France so much in awe as steadily and effectively to pursue this measure, especially if there could be any hopes of having a Dutch fleet to join us. France has already felt this, and knows that her trade and colonies must always be in the power of the superior force at sea. I therefore hope this will be carried through in the next session.

[Continuing, he declares that he has little expectation from the side of Spain, and approves in general the instructions given to the envoys to Russia and Austria, at the same time expressing great suspicions of the latter's sincerity.]

When I look back, I am quite ashamed of the long trouble I have given you; but your Grace will remember that you tempted me to it, and I thought it my duty to convince you that I had considered your letter attentively. Don't be angry with me for my freedom, for it is entirely meant to be submitted to you. I neither have, nor will talk this language to any other person, and therefore beg you would not communicate it to anybody. I look upon your Grace at present in a situation, wherein you never were before, and in which I most sincerely wish you may very long continue:— I mean the supreme direction of public affairs....For myself, I am most faithfully and unalterably, my dear Lord,

Ever Yours,

HARDWICKE.

*Duke of Newcastle to the Lord Chancellor*

[N. 34, f. 122; H. 62, f. 140.]

CLAREMONT, Sep. 2, 1749.

MY DEAR LORD,

I should very little deserve the friendship and confidence which your Lordship shews me, and make a very bad return to the great attention you have given to my letter of the 25th August, in yours of the 30th, if I did not take an early opportunity of returning you my sincere thanks for both; and of assuring you that, however I might have wished for the confirmation of my own opinion, that our sentiments upon the system of foreign politics had been in every respect the same, my obligation is (if possible) greater, when you have, in so friendly and so clear a manner, suggested your doubts. And I will therefore, with your permission, make such observations upon every part of your letter, which is now before me, as I think may clear up the points in dispute between us.

[His desire was to form an European alliance strong enough to prevent the wanton breaking of the peace, either by Prussia or

France. He reiterates his opinion that the failure to secure Denmark was occasioned by not offering subsidies in time. The principle of giving subsidies in time of peace he only supported so far as was necessary to maintain the peace, a measure all the more necessary because of the weakness of Holland. There was a vast difference between making this a regular system, and publishing to all the world its utter impracticability. No doubt, one cause of the difficulties brought upon Sir Robert Walpole's administration was the great expenditure, "to no view, end or purpose, but serving some immediate personal object." If, however, the money had been wisely employed in forming an alliance upon the Continent, in support of Austria against the designs of France upon the death of Charles VI, the expenditure would have been universally approved. Proper economy he would always support, but always oppose ill-judged parsimony; and the expenditure contemplated by him would not be large enough to obstruct the scheme of dealing with the National Debt. The Chancellor was quite mistaken in the views he attributed to the King of Sardinia, and as to the possibility of the subsidised princes after all deserting England at the outbreak of the war, this was a risk which must be incurred and prevented as far as possible by a prudent choice of allies. France, at least, had not been prevented by such fears from securing Denmark. As to the alleged impracticability of competing with France in her lavish expenditure abroad and military upkeep, the Duke replied,] Does France reason; because they can't have a fleet equal to ours, *therefore they* will have none at all? [He then urges the adoption of a treaty with the two Emperesses of Russia and Austria, as the first step in founding the alliance against France and Prussia. News had just come from the Elector of Cologne, that if the maritime powers did not grant him the subsidy of 200,000 Dutch florins (under £20,000) for four years, he would immediately conclude with France. Should he be lost for such a trifle? He entirely agreed with the Chancellor upon the necessity of maintaining and increasing the navy. But] a naval force, tho' carried never so high, unsupported with even the *appearance* of a force upon the continent, will be of little use.... France will outdo us at sea, when they have nothing to fear by land.... I have always maintained that our marine should protect our alliances upon the continent; and they, by diverting the expense of France, enable us to maintain our superiority at sea....

[On September 26, 1749 (N. 34, f. 186; H. 62, f. 166), the Chancellor writes a long letter from Wimpole in answer to the Duke's, on the proposed accession of England to the alliance of Austria and Russia of 1746. The Duke had urged] that the accession to this treaty will unite our engagements with the two Emperesses, and consequently give them the greater weight; that it will be the basis of a more solid and extended system, to which the Republic

of Holland and other Powers will accede, and thereby a considerable party be form'd in Europe. [The Chancellor, however, questions whether this end will be not rather defeated than secured by such a measure. The treaty itself, without the secret articles, to which it was impossible for England to accede<sup>1</sup>, was a mere shell; and this would excite a suspicion that it was agreed to for other reasons. It was to be made on the foot of certain anterior treaties, which would probably create entanglements; and the King of Prussia, if he knew of the treaty<sup>2</sup>, might have reason to complain that the Empress Queen was violating the guarantee of Silesia. Could England, he asks further, engage in a new war on account of another Polish election? Might not the effect be to frighten away the Powers from a general plan, instead of collecting them, owing to fears of being implicated in these offensive engagements; while Prussia would be provoked uselessly, and Denmark driven into the Court of France? It would be better to strike out some new plan, for securing this alliance, simplified, and free from entanglements and misunderstandings<sup>3</sup>.]

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 7, f. 248.]

PARIS, May  $\frac{9}{20^{th}}$ , 1750.

MY LORD,

...We have no news yet of the Duke of Newcastle's being got to the Hague, but we expect some account of him by this day's Dutch mail. The letters from Dunkirk and Lille are full of his Grace's curiosity and the infinity of questions he asked. You will acknowledge your friend by those marks. I assure you, if he had been a military man, he would have occasioned some suspicions; as it is, it only gives room for conversation. He tired Mons. Seychelles, l'Intendant de Flandres, at the last of the above mentioned places, by walking him all over and all under the works, both of the Town and Citadel. He was in high spirits, of which nobody has a greater fund....

<sup>1</sup> The secret articles in the Treaty between Austria and Russia included the restoration of Silesia to Austria and the partition of Prussia, to which, of course, Great Britain could not accede, as she had guaranteed the possession of Silesia to Frederick by the Convention of Hanover on August 26, 1745. See above, vol. i. 626.

<sup>2</sup> He was informed of it in January 1753, through Menzel, a Saxon clerk, who sent him a copy of the secret articles, and from Weingarten, an attaché of the Austrian embassy at Berlin. Carlyle's *Fred. the Great*, Book xvi, Chap. xv.

<sup>3</sup> Further correspondence on this point, N. 34, ff. 193, 205 and H. 62, f. 169.



*Duke of Newcastle to the Lord Chancellor*[N. 35, f. 380; H. 62, f. 215.] *Private.*HANOVER, <sup>May 23</sup>  
<sup>June 3</sup>, 1750.

MY DEAR LORD,

...I have desir'd my brother to communicate all my letters to your Lordship...and I hope therefore you will take those letters as wrote to yourself....The objects of my residence are : 1st the election of a King of the Romans, and the securing for that and other purposes, the Elector and Princes of the Empire : 2ndly, the accession to the Treaty of 1746 with the two Empresses: 3rdly, the accommodating the disputes between the Court of Vienna and the Republic of Holland relating to the Barrier, and the putting that in some way of being restor'd. 4thly, the reconciling the King, as Elector, and the other Protestant Princes with the Emperor, upon their present disputes : 5thly, or rather in the first place (if possible), the making up our differences with Spain, which now seems further off than ever. I beg you and my brother would give attention to this last....I can't say this place is quite so *agreeable* as it was the last time. But my brother and you can make everything agreeable to me, who am, ever,

My Dear Lord,

Most affectionately yours,

HOLLES NEWCASTLE.

[On June 6, 1750 (N. 36, f. 47; H. 62, ff. 226, 232), the Chancellor answers the Duke's letter of May 23/June 3. He suspects some collusion between Austria and the German Electors in the negotiations for the election of the King of the Romans, in order to secure British subsidies; and urges the Duke not to be the dupe of their intrigues. Parliament would not go further than the grant of subsidies to Bavaria and Cologne, and the Duke should be strong in standing his ground on that point. He agrees that the points of policy, enumerated by the Duke, have their weight, but surely it was right for the King of Great Britain to stand as clear as possible from all interior Germanic disputes, though this might require a "very nice steerage." The settlement of the disputes with Spain was a very important object to which, however, there existed special obstacles, in the desire of each of the Spanish ministers, Enseñada and Carvajal, to throw the responsibility of what might

<sup>1</sup> Writing on August 12/23, 1750, the D. of N. narrates that having said to the King "I only write upon the secret part of them (*i.e.* foreign affairs) to my brother and my Lord Chancellor," the King answered, "No, they two are the only ministers; the others are for show." Coxe's *Pelham*, ii. 371.

prove an unpopular measure, upon the other. The treaty of 1715<sup>1</sup> was said to have been bought of Grimaldi; would not one of these gentlemen sell?<sup>2</sup>...

Writing to the Duke of Newcastle on August 23, 1750 (H. 63, f. 26), the Chancellor explains his efforts to make Henry Pelham agree to the necessary treaties and subsidies with the German States but, as was perhaps inevitable, the programme had widened, and the Chancellor confesses his agreement with the latter in disapproving of another treaty with the Elector Palatine.] The territorial and family disputes in the Empire are infinite and it has been always my opinion that Great Britain should not be involved in them<sup>3</sup>.

*Duke of Newcastle to the Lord Chancellor*

[N. 38, f. 33; H. 63, f. 80.]

Sept. 26th  
Octr. 7th, 1750.

Most secret

...You will see, by my letter to my brother, the infamous part the Elector of Cologne and his minister act. Nothing can be said for it: but if we lose the Elector of Cologne and don't get the Palatine or Saxony, we are blown up; and I beg you would consider whether this great system should fail for twenty or thirty thousand pounds.... I have promised to give no subsidies but to Bavaria. I have kept my word. I hoped and believed that might be sufficient to carry our great object; but if it is not, would...your Lordship fling the whole Empire into France for the sake of perhaps ten thousand pounds, most unjustly asked by the Elector of Cologne, or 30,000 or 40,000 in the whole, demanded by the Elector Palatine for an old debt. I fling this out only for consideration; you may be assured I shall do nothing<sup>4</sup>....

*Right Hon. H. Pelham to the Lord Chancellor*

[H. 75, f. 109.]

October 6th, 1750.

...His [the Duke of Newcastle's] letter upon public business is, in my poor opinion, of all propositions, the most inadmissible, ransacking obsolete demands and asking for money to pay debts, which have been many years liquidated, and for which this Country is now mortgaged for near 3 millions of money, by the corrupt correspondence between these kind of rogues and certain commissioners, whom you and I remember. How can it be mentioned in Parliament and for what? To buy a Prince of the Empire

<sup>1</sup> The Commercial Treaty between Spain and Great Britain, signed December 1715.

<sup>2</sup> Further correspondence H. 36, f. 145 and H. 63, f. 193; N. 38, f. 172.

<sup>3</sup> Further H. 243, ff. 112-116.

<sup>4</sup> See also Henry Pelham's letter to the Duke, N. 38, f. 48 and H. 63, ff. 156, 189.

to do that which England, at best, is but collaterally concerned in. And how do we know we should have the vote at last? Cologne has broke his word, as they say. Why may not Palatine do so too? And what security have we that Bavaria is not at the bottom of all this? It seems to me as if these three great Princes were playing their cards to assist each other, without any regard to their private engagements, or their public oaths or interests. I should be glad to know your Lordship's opinion upon these letters. As I understand 'em, it is impossible for me to give the Duke of Newcastle any encouragement. I find it is a dangerous experiment to try and please him at the expense, or abatement, of one's own opinion.... Pray send me word when you will be in town, for I shall try to see you as soon as I can....Ever most truly Yours,

H. PELHAM<sup>1</sup>.

*Lord Chancellor to Jonathan Belcher, Governor of New Jersey, in answer to a letter from the latter, complaining of the attacks upon him in England and of the little support received from the Government at home in dealing with the riots concerning the ownership of lands<sup>2</sup>, in which some members of the assembly were implicated*

[H. 561, f. 148.]

WIMPOLE, Augt 31<sup>st</sup>, 1751.

SIR,

I received by Mr Partridge your letter in November last, and also that of the 2nd of July, and as my short recess here gives me a little more leisure for correspondence than my busy life in London affords, I sit down to answer them both. [Thanks him for the present of American plants.] The disorders and confusions in New Jersey, carried almost to the height of revolution, and the difficulties which they have brought upon your administration there, have given me a great deal of concern, principally on the public account, but partly on account of the share I had in recommending you (though then a stranger to me) to that government. For you cannot be ignorant that this disordered state of the Province, the backwardness of the Assembly to redress it, and to support the authority of the King's Government and Laws, and the countenance which you are (though I hope unjustly) alleged to have given to the Assembly in their disputes with the Council, have brought some imputation upon your conduct, even in the opinion of many impartial persons, as things have been represented here.

For my own part, I have always maintained that, however you

<sup>1</sup> Further H. 63, f. 271; H. 64, ff. 28, 34, 39. Coxe's *Pelham*, ii. 403, 408.

<sup>2</sup> Bancroft, *Hist. of the U.S.* (1885), ii. 342, 398. See also H. 561, ff. 109, 112, 114.

might possibly be mistaken in some points, yet I was persuaded you had acted with integrity, according to your judgment; but there is one thing, which I ought not to conceal from you, that Mr Partridge, who is your agent, having also appeared in some degree as agent for those who came over with petitions from the rioters, has given colour to these suggestions and done you disservice.

I think you have now an opportunity of retrieving all this, if you make a right use of it. You will, before this time, have been acquainted with His Majesty's order in Council, part of which is for issuing a commission *to enquire into any grievances of the people of the Province relating to their possessions there*. This is a strong instance of the King's goodness, as well as justice to his subjects, and shows he will not suffer even the disobedient, and those who deserve no favour at his hands, to be oppressed. At the same time the King's Government and the authority of his Laws must, and will be supported; and it is a great reproach that, after so many flagrant instances of riots and rebellion, no one example of justice has yet been made, no one measure been agreed to for trying them in indifferent places, nor for procuring a sufficient force to protect the Courts and officers of the Law from insults.

I am willing to hope that, when the numbers of people, who have been seduced from their duty, shall be fully informed of His Majesty's equitable and gracious disposition in ordering this commission, they will entirely submit themselves and immediately behave as becomes peaceful and dutiful subjects. This will be the test of the loyalty they profess and the assurances they have given. And, when I said that you have an opportunity of retrieving what is past, my meaning is, that by such an act of justice and goodness shown to the people by the Sovereign whom you represent there, your hands will be strengthened to act with the greater firmness and vigour, and to demand of the Assembly to concur with you and the Council in exerting the authority of the Laws, and in supporting the (?) measures of a government, which has acted towards them with so much benignity, notwithstanding the provocations they have given. I observe that one of your complaints is the slight put upon your recommendations of proper persons to fill up vacancies in the Council. From what I have already said, you see the cause of it, and how it may probably be rectified. To neglect this opportunity may be of fatal consequence. I cannot too earnestly recommend to you to consider seriously of these matters, and to exert yourself

to restore good order to the colony and strength to the Government, in which I heartily wish you success, as well as perfect health....

[Belcher in answer (ff. 150, 217) repudiates warmly all the accusations against him, receives a further encouraging letter from the Chancellor, and on December 8, 1755, writes describing the unity and zeal of the Colony in defending the territory against the French. He advises an attack upon Quebec, the headquarters and capital of the French, rather than attempts upon the smaller forts, and the dispatch of a mixed force of British and Colonial troops to effect its reduction.] The present complexion of affairs in North America seems to say the coming year will be the criterion, whereby we shall be able to conclude, whether the French shall drive us into the sea or whether King George shall be emperor of N. America<sup>1</sup>.

*Lord Chancellor to the Hon. Philip Yorke*

[H. 3, f. 218.]

POWIS HOUSE, Octr 12th, 1751.

DEAR MR YORKE,

I...return you our friend Horace's<sup>2</sup> letter. My opinion about it is just the same as yours, and I am sorry for the temper in which it is writ, the rather as the cause is plainly a personal one. I have known Horace long, and love him; and have shew'n him all the civilities in my power, ever since the great power had left his family. I think him very honest, and he knows a good deal; but I know him to be extremely positive and tenacious. What is a little provoking is to see him all along reproaching the ministry with making personal flattery to—[the King] the motive of all their foreign measures, when he must remember that that motive never prevailed more strongly, than whilst his brother and he had the direction of them. One sees plainly the *contrary* system, which he would have had pursued since the conclusion of the Peace. 1<sup>o</sup>. To enter into a close connection and intimate correspondence with France. Having himself pursued this principle, under my Lord Townshend and his brother, I know he will never quit it. What did this produce, but the weakening the House of Austria, and the ancient allies of Great Britain, and those dangers which brought on the last war?

<sup>1</sup> See also R. O. *Board of Trade, New England*, vols. 20 sqq. for further correspondence.

<sup>2</sup> The elder Horace Walpole. See above, vol. i. 162 n., 650. His great grievance against the Duke of Newcastle was the delay in making him a peer, and it was not till 1756 that he was created Lord Walpole.

I shall live and die in the opinion that the Treaty of Hanover was the fundamental source of all the mischief; and what was that but the gratification of the resentment of the late King and my Lord Townshend against the Court of Vienna? The mischief of it was so glaring, that they themselves were forced to tread their steps backwards by the Treaty of Vienna of 1732. The same consequence will always follow that, whenever Great Britain enters into an intimate union with France, you throw all the rest of Europe into her arms, and must absolutely depend upon her<sup>1</sup>. 2ndly, his other great point is to raccommode and unite with Prussia. And this would be right, if it were practicable. It has been more seriously attempted, and more real services done for that Prince, since the change of Ministry in 1741 [*i.e.* 1742] than ever was ventured to be even proposed before. And what effect has it had upon the spirit of that ambitious, turbulent, and I had almost said perfidious Prince? I am convinced nothing will satisfy him but reducing and depressing the House of Austria, partly for the sake of his exorbitant views in the Empire, and partly from the principle that *he, who does the injury, never forgives*. There is also another reason, which you have heard me mention before; that I am persuaded nothing, which we could offer, would induce him to separate from France for the sake of her great subsidies, without which he cannot keep up an army so much beyond his proper force, and which he knows we can never give in the same proportion....I really don't know what to advise, besides writing him a very civil letter and adding some politeness from me, and how mortified we both are not to have had the pleasure of seeing him and Mrs Walpole. When a man is discontented from reasons concerning *self*, there is no convincing him but by satisfying that *self*. You may suggest that he takes things in much too strong a light; that, surely, it was right to try and get a King of the Romans elected in time, in order to prevent the troubles, which arose from the last interregnum; that the putting an end to all our differences with Spain and becoming better reconciled to that Power than ever, and improving their disposition to shake off the fetters of France, is surely a right measure, especially if it should be followed by a more strict alliance with that Crown, not at all onerous, merely defensive, and tending to cement and preserve the Peace settled by the Treaty of Aix-la-Chapelle; which you may hint you have reason to think he may probably soon see. But tho' you must make him a compliment upon his *political tracts*,

<sup>1</sup> Cf. above, p. 14.

of which I know our friend is vain, I would have you particularly *avoid* saying anything to invite or encourage him to communicate his new *opus promissum*<sup>1</sup>; for that will only produce altercation, and when he has once exposed it, he will be the more tenacious. His resolution not to come to Town nor to give any support to the administration, I think you may modestly blame for his own sake. The cause of it is too glaring, and it will hurt himself....

I am ever, Yours affectionately,

HARDWICKE.

*Col. the Hon. Joseph Yorke to the Hon. Philip Yorke*

[H. 15, f. 292.]

HAGUE, *Decr 27th 1751*<sup>2</sup>.  
*Jany 7th 1752*

DEAR BROTHER,

You are very kind to think so much of your vagabond brother as to epistolize him without any hopes of return, as you are pleased to say; though it must go very hard with me indeed, if I don't now and then find a quarter of an hour to thank you for your affectionate concern for my welfare. It is true that, in my present situation and province, the office demands upon me are very large, and I am frequently quite drained by the *Private, Most Private, Secret, Most Secret, Separate, Apart*, and all the train of words that they require to look decent.... I must sit down with the mortification of being hereafter criticized by some such future paper-mongers as you and Birch, who will wonder that so dull and wordy a fellow was not recalled in half an hour....

It is now too late to talk of my reception and setting out at this place. I am sure you have rejoiced it has been so successful, and I hope [it] will justify to a degree my way of talking before I left England, which I will do you the justice to say you did not condemn; I mean my not despairing nor desponding, but being willing to believe things might be brought about again by a proper conduct. My predecessor's<sup>3</sup> fault was to have been too particular in his acquaintance. I am sure no foreign minister will ever succeed, or be able to send good accounts, if he is so. His business is to see and converse with all sorts of people and to make himself, if he can, agreeable to them. I declared that I would do so when I came, and I have succeeded in my first steps by it.

<sup>1</sup> A memorandum on public affairs.

<sup>2</sup> Col. Yorke had now been appointed British Envoy at the Hague.

<sup>3</sup> Solomon Dayrolles, Gentleman of the Privy Chamber of George II, Master of the Revels and Gentleman Usher of the Black Rod, Resident at the Hague 1747-1751 and subsequently Resident at Brussels till 1757; secretary to Lord Chesterfield; died 1786.

The interior of this country wants so much settling, and the factions that divide it are so warm, that it renders it very difficult, if not next to impossible, to get any attention paid to foreign affairs; and indeed, till they have taken proper measures to secure their form of government (which I hope and believe they are taking), it is absurd to be pressing 'em to take any general measures in conjunction with you. The cry of the opposition in this country is, that England has undone them, that England has been the original cause of the loss of their Barrier, their load of debts, and all the train of evils that accompany it. This clamour makes the Princess Royal have a very hard task; for she does not mean ever to separate from us, and yet she is afraid in the smallest thing to look as if she was led by England. You will easily see how difficult this makes the situation of an English minister here, and yet with patience and some art I think all that may be got over. Her Royal Highness...never fails to see me whenever I go to ask after her, though she sees no other foreign ministers....She is very expeditious and clever in business; she acts with spirit, and has done more for her family since the Prince's death than ever he did, from the time of his being called to the Head of the Republic to the hour he expired. The boy is a fine one and promises much. He has quick and lively parts, full of spirit, and talks three or four languages with great facility<sup>1</sup>....

JOSEPH YORKE.

[In a very private letter to the Duke, of May 1, 1752 (N. 42, f. 49), the Chancellor refers again to the eternal question of the election of the King of the Romans and the attitude of the Austrians.] Indeed, my dear Lord, the language held both by the Emperor and Empress (particularly the latter) on this subject has disturbed me much. If they adhere to this, or continue to create new difficulties, they will drive this country (as your Grace has very rightly said) into a new system, and besides they will destroy their best friends here. There will be no standing it in Parliament; for everybody will say that they only meant to hold out the lure of proceeding to an election, in order to draw us into give [giving] subsidies in Germany in time of peace; and whilst some will say we have been dup'd by them, others will maintain that we colluded with them to cheat the nation.

[The above paragraph and most of the letter is translated into French (f. 51) presumably for the purpose of showing it to the Austrian and Hanoverian ministers.

<sup>1</sup> The infant prince William V, born in 1748. The Princess had been named his Governor, and Regent, on the death of her husband, October 11, 1751. See her letter to the Chancellor, H. 1, f. 24.



On May 20/31, 1752 (N. 42, f. 202 ; H. 64, f. 102), the Duke of Newcastle acquaints the Chancellor that the Court of Vienna has refused the terms proposed for the election of the King of the Romans.]

*Lord Chancellor to the Duke of Newcastle*

[H. 64, f. 114.]

May 29th, 1752.

...I never was more shocked in my life than with the accounts ...of the behaviour of the Court of Vienna. *Quos perdere vult Jupiter, prius dementat*...I must own myself quite at a loss. To make all the reflections, which their monstrous ingratitude and impertinence deserve, is almost as impossible as unnecessary.... The consequences hereof will be fatal to this administration and to the present system of foreign affairs. The nation will be said to have been duped and deluded ; and the ministers will have no other way to defend themselves, but by openly throwing the blame upon the Court of Vienna....Of this advantage will be taken by those, who dislike the present system, and I think I see the symptoms appear already. You will be told you have nothing to do but to break off your connection with this ungrateful, impracticable Court of Vienna, and be well with France. Thus you will run into the politics of 1725<sup>1</sup> etc....Holland will become still more exasperated by combining this provocation with those they will certainly receive in the course of the negotiations about their barrier and commerce, wherein we are also interested ; and the French party there will gain strength, and recover their ground upon it. In short, I see such a complication of mischiefs, that the very prospect frights me....[He can only "fling out" two hints : (1) that some trustworthy friend should carry a secret communication from the Duke of Newcastle direct to the Empress, to point out the perils of the path she had taken ; and (2) another attempt might be made, to persuade the Court of Vienna to go some little way in satisfying the Elector Palatine,] and make up the rest by a moderate sum of money from hence. I own the burdening this country still more is intolerable and I can hardly forgive myself for mentioning it ; and I must beg your Grace will not commit me, for then I shall never be forgiven by others. I know it is to be entered into with great caution and not with forwardness ; but, really the King's honour is so much engaged ; he will make such a figure, both at home and abroad, if this measure fails, and fails in

<sup>1</sup> The treaty of Hanover with France.

this manner, and the consequences of it may be so fatal, that a moderate expense may be justified<sup>1</sup>.

[Writing further on August 7, 1752 (N. 44, f. 39; H. 64, f. 245), the Chancellor, after discussing in a long letter the election, which is now almost despaired of, adds:] I am convinced that they [the Austrians] are against the measure of proceeding to an election at this time for reasons, which they do not own.

*Right Hon. Henry Pelham to the Duke of Newcastle*

[N. 44, f. 210.]

August 28th, 1752.

...On Wednesday in the afternoon I went to the meeting at Lord Holderness's, tho' I found myself very little fit for such conferences. Your friend, Lord Granville, came in soon after I arrived, in my opinion drunk; for he talked more like a madman than a grave councillor of the King's, and entertained us with such a heap of wild stuff and nonsense, that I own I could hardly keep my temper. I gave him one or two replies, which he may think of at his leisure. We all agreed in the main question, but that would not do for him; and in the temper I was, I did not want much more. I could not bear to stay long with him, which prevented my having that discourse with the Chancellor which I wished to have had. I think we shall not now have many more of these conferences upon your foreign affairs; and thank God, he is too great a genius to condescend to give us any trouble in domestic ones....

*Earl of Holderness to the Duke of Newcastle*

[N. 44, f. 232.]

August 28th, 1752.

*Entre nous.*

...Our friend Granville was *fine* at our meeting on Wednesday; wine had heightened his zeal and eloquence; and he was so fond of showing his ardour for the conclusion of the Election at any rate, that he would fight out the point, when everybody were of the same mind; and I own he might as well have omitted some part of his declamation, which would at no time have suited Mr Pelham, and was far from being agreeable to the tinge of melancholy, which cruel private concerns had given him at that time<sup>2</sup>.

[The Chancellor, however, writing on August 27 to the Duke (H. 64, f. 301; Cox's *Pelham*, ii. 445), carefully avoids all mention of these incidents, and merely emphasizes the fact that they were all agreed on the main question and the grant of a sum of money, to procure the election.

<sup>1</sup> See further, N. 42, ff. 302, 363, 402 and N. 43, ff. 27, 59, 90, 120, 137 and H. 64, ff. 118, 120, 137, 151, 168, 195, 202, 237.

<sup>2</sup> Possibly the death of Lord Clinton, his eldest grandson, son of Lord Lincoln, which took place this year.

On September 19, 1752 (Coxe's *Pelham*, ii. 448, 450), the Duke informs his brother of the King's obstruction of the negotiations, his motive being his desire to have an excuse for remaining a little longer in Hanover; on September 28 he writes word that the King had, in return for his good offices, demanded a fief from the Empress.]

*Right Hon. Henry Pelham to the Duke of Newcastle*

[N. 44, f. 411; H. 65, f. 39.]

Sep. 29, 1752.

...My opinion of him [Lord Granville] is the same it always was. He hurries forward all these German affairs, because he thinks he shews his parts and pleases the King, both which, I think, he is mistaken in. But believe me, he lies by. He has as much vanity and ambition as he ever had; and he hopes therefore, in all these contradictory circumstances, something may fall out, and then, he imagines, he is sure to succeed....Notwithstanding this, when we meet at the Regency, Council, etc. we laugh, and are as good friends as ever.

[Continuing, he repeats that his opinions as to foreign policy have in no way changed.] Before you began, I wished to prevent your getting into difficulties, which I thought I foresaw; and therefore, as far as I decently could, opposed those measures. But when I was overruled by numbers and by power, and brought to acquiesce in what I never approved of, the same friendship for you, duty for the King, and some regard for myself brought me to consent, as far as I could, to this further measure of expense...; in truth, I only think that, having gone so far as we have done, it would be absurd to break the whole affair for the additional expense of six or seven hundred thousand florins.

*Duke of Newcastle to the Right Hon. Henry Pelham*

[N. 45, f. 22; H. 75, f. 136; also N. 44, f. 412.]

Oct. 3, 1752.

...The incident, I mean, is a very extraordinary one. Upon my return hither, the Grosvoight Munchausen<sup>1</sup> acquainted me with what the King had said to Mr Steinberg<sup>2</sup> and him, relating to the 700,000 florins then supposed to be paid by us [to the Elector Palatine]. H.M. was pleased to talk very strongly against it, and when M. de Munchausen tenderly (and I dare say very tenderly) offered to say one word in support of it, the King told him that that was the opinion of a fool or a madman, and this in the presence of M. Steinberg. H.M. then told them both, that he could not open himself with that confidence to me upon the subject that he would do to them; that his true reason for saving this money to the nation was in order to

<sup>1</sup> Hanoverian minister.

<sup>2</sup> Probably Ernst v. Steinberg, Hanoverian minister.

get a subsidy of £40,000 p. ann. for Russia; that he would cajole and manage Mr P[elham], and that he should get his consent to it. This, you may depend upon it, is fact....

You will see, dear Brother, by these circumstances, what is the *Carte du Pays* both with the K[ing] and the Lady. [He had above described some instance, or supposed instance, of the Countess of Yarmouth's treachery.] I am persuaded they will not have the least influence over you. I am persuaded also that you know as much, perhaps more of the same kind, with regard to me (how we are, and have been, both played off at each other), tho' you have been too prudent to mention it. But I tell you the whole, being thoroughly sure that, whatever you think or may hereafter do, you will not let one soul alive (except Stone and the Chancellor) know what I have wrote to you....I thought it was necessary that you should know all; for knowing these things, we may, if we please, prevent any ill consequence from them; and the moment it is seen that we act in concert and without reserve, all this little, low game will fall of itself. H.M. did very right in not trusting me with his true reason for being against giving the money for the Election. I should certainly have told him, that no expense could be justified or practicable, if this was neglected, and I conclude also that the King imagined that I should immediately have acquainted you with it. This is the meaning of what H.M. said remarkably to me: "You may have this thing (the Election) much at heart, I have it not so much." That is in other words, I have another object in view....

I was this morning with the King. H.M. was most extremely gracious...was very open and confidential, and came out with his secret, rather by way of excuse (I really think) for having been seemingly against the money for the Election. He talked of the advantage of an alliance with Denmark and Russia, in which I agreed. I hinted something of the great advantage of the Election also. The King said, "I desire, it is true, to save the nation's money, but I was the more desirous to save it upon this occasion in order to do the other."...

*Lord Chancellor to the Duke of Newcastle*

[N. 45, f. 47.]

October 6th, 1752.

...From the time your Grace acquainted me with *the secret advice* given to the Empress that she should not advance more than 500,000 florins, I saw there was a private, underhand negotiation, and feared it comprehended more than was then owned...What a condition do the most faithful ministers act under, who are thus countermin'd by those, whose avowed orders they are executing, and who stand responsible to the world for the success of the measures, which their own Principals are at the same time obstructing?...

*Lord Chancellor to the Duke of Newcastle*

[N. 45, f. 67.]

WIMPOLE, Oct. 10, 1752.

...As to the words made use of, tho' they are to the last degree shocking, and give me real pain to read them, yet they are only the effects of heat and passion, and certain ill humours, to which I don't care to give the true name, and what in the like temper would have been said of anybody that ever was about him. They are therefore to be neglected, but at the same time to be known to as few persons as possible, not *merely* for the sake of the persons who have made the discovery. As to the avowal of *cajoling and managing* Mr Pelham, your Grace is certainly right in communicating it to him in the confidence you have done. The use you make of it is also right, and I think it will have a good effect....

*Rt. Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 130.]

Octr 10th, 1752.

...I have had experience enough already not to be *cajoled* for the future, and I can assure your Lordship, had not my own brother been concerned, I should not have been so easily worked upon, as I have been hitherto. What I have proposed to the King, was for his own sake; if he don't care to do it for his good, I won't purchase it by flattering him in his interest as Elector, and come into a measure, which [it] is evident will ruin him as King. I should have told H.M. the only good reason for giving this money to the Elector Palatine is, that it will put a stop to subsidiary measures for the future. I have wrote so to my brother more than once, and meant the King should see it, but *he* did not choose H.M. should. As to all that stuff of acting together and thorough confidence, I am sick of it. I know no time that I had a secret, nor none have I now. When we differ *toto coelo* in a measure for the public, how can we act together? When that is not the case, when did we not act together? Forgive me, my dear Lord, I am tired with these *friendly* but childish repetitions. And our Master will ruin us all<sup>1</sup>....

H. PELHAM.

*H.R.H. The Princess of Orange to the Lord Chancellor*

[H. 1, f. 28.]

HAGUE, April 6th, 1753.

The great confidence I have in you, my good Lord Chancellor, makes me trouble you with these letters. I write to the King, to implore his protection at a time, when the whole good and old

<sup>1</sup> See further H. 66, ff. 30, 47; Coxe's *Pelham*, ii. 459.

system is in the utmost danger. I know your sentiments upon it, and therefore can't put my interest in better hands than yours. Your son, who I must commend for his behaviour here, will explain to you, better than I can myself, how much the French party will get ground by the monstrous propositions of Count Kaunitz<sup>1</sup>, when they come to be known; and nothing but the strongest union and marks of protection from the King can make me hope to be useful at this time, or to establish the present government. I have said enough *to a Friend*, and therefore don't doubt but you will assist me, and help me through, in this terrible affair, being always your true and sincere friend,

ANNE.

[To this the Chancellor replied on April 13 (f. 29), expressing his fidelity and devotion to her cause and that of the alliance, and stating that the ministers had the affairs of Holland under their special consideration.]

<sup>1</sup> See above, p. 3. Austria refused to pay the sums due to the Republic for the upkeep of the barrier towns, which it was now hoped might be supplied by England. H. 8, ff. 125, 133-9.

## CHAPTER XX

DOMESTIC HISTORY 1748-1754

THE conduct of foreign affairs was not the only, nor even the chief subject of dissension between the Pelham brothers. There was a rivalry for the principal power which, together with a fundamental disagreement in policy, carried their disputes and ill-humour into every department of administration. At home their altercations at this time centred round the Duke of Bedford, who had been appointed Secretary of State on the resignation of Lord Chesterfield in 1748. A young man of good character and of considerable parliamentary interest and following in the country, but of excessive pride and self-esteem and of very limited ability and experience, he had by no means proved a colleague of the tractable and subordinate kind desired by the Duke of Newcastle and had, in fact, been appointed without his approval, instead of Lord Sandwich. He conducted an independent correspondence with the British ministers abroad, and the Duke of Newcastle's jealousy was aroused. The Duke of Bedford, piqued at the exclusive control of affairs exercised by the former, neglected ostentatiously the business of his office for play acting and cricket-matches, and entered into secret cabals with Lord Sandwich, who had incurred the Duke of Newcastle's resentment during the negotiations at Aix-la-Chapelle<sup>1</sup>, and with others against his brother secretary; and, aided by the Duke of Cumberland, who had taken Lord Sandwich's part abroad and by Princess Amelia, made some impression upon the King's mind and began to alienate his confidence from the Duke of Newcastle<sup>2</sup>.

Accordingly the latter, always fully alive to hostile intrigues, moved ardently for the Duke of Bedford's dismissal, a measure which was as strongly opposed by Henry Pelham, who wished the

<sup>1</sup> See above, vol. i. 633.

<sup>2</sup> p. 91; N. 35, f. 365; H. 62, f. 240.

administration to be supported by persons of influence, who feared the consequences of the loss of the Duke of Bedford and his faction and who, moreover, regarded his presence in the Cabinet with complacency as a curb and balance to his brother's power. The Chancellor, also, was opposed to any hasty action, deprecated the ostracism of men of weight and influence in the nation and the choice of "little people," who, however agreeable, would bring no support to the administration; and thought that Bedford's incompetence in business would of itself in time bring about his retirement<sup>1</sup>.

To follow all the details and incidents of the dispute would be tedious<sup>2</sup>. Mutual recriminations of a bitter and angry character passed. In July 1750, the Duke of Newcastle threatened to throw up his office and retire to the Presidency of the Council<sup>3</sup>. He returned in November from abroad in great ill-humour and, in spite of the Chancellor's friendly remonstrances, remained for some days at Dover without coming to London, lest, he declared, he might be suspected of further influencing the King's judgment<sup>4</sup>. The great question remained in awkward suspense<sup>5</sup>, and the brothers ceased to hold personal communication; while in January 1751 the breach was further widened by Henry Pelham's obstinacy in reducing the navy<sup>6</sup>. A temporary reconciliation was effected in February 1751, and Pelham was at last prevailed upon to apply to the King for the Duke of Bedford's dismissal, but met with a refusal in which he gladly acquiesced<sup>7</sup>. At length, however, the King himself became convinced of the necessity of the Duke of Bedford's withdrawal<sup>8</sup>. On June 13, 1751, his follower and supporter, Lord Sandwich, was dismissed from the government, and arranged to receive the notice of his discharge at the Duke of Cumberland's at Windsor, "as I think it will have a good appearance in the world<sup>9</sup>." It was immediately followed by the resignation of the Duke of Bedford, on June 14, who, in a parting interview with the King, took care to do all the harm he could to his successful antagonist by some stinging reflections upon the Duke of Newcastle's treachery and ambition, which were heard by the Sovereign with some sympathy, and by

<sup>1</sup> pp. 100, 102, 117.

<sup>2</sup> pp. 84 sqq., 91, 93 sqq.

<sup>3</sup> p. 93.

<sup>4</sup> p. 108.

<sup>6</sup> p. 112; Coxe's *Lord Walpole*, ii. 294. Walpole's *George II*, i. 161, 185 sqq.; *Letters*, iii. 22; *Chatham Corresp.* i. 54; *Chesterfield's Letters* (Bradshaw), 925.

<sup>6</sup> Above, p. 2.

<sup>7</sup> N. 39, f. 191.

<sup>8</sup> Coxe's *Pelham*, ii. 384.

<sup>9</sup> p. 115; *Bedford Corresp.* ii. 94.



assuring the King that the cause of their quitting the administration was their attachment to the Duke of Cumberland<sup>1</sup>. The unfortunate Duke of Newcastle was blamed and reproached on all sides. The Duke of Bedford, as Henry Pelham had feared, strongly supported by the Duke of Cumberland and Princess Amelia, went immediately into active opposition, and with his following in the House of Commons, which was considerable, took every opportunity of attacking and embarrassing the government<sup>2</sup>. The Duke of Newcastle was blamed as one, whose ambition and intrigues constantly disturbed the King's service, and was pointed at as the author of all the internal difficulties and discords. In these reproaches Henry Pelham and even the King, led by the Duke of Cumberland, joined; and the unlucky Duke was treated in the Closet with a rudeness and a neglect, probably without parallel in the relations between a minister and the Sovereign<sup>3</sup>. So bitter and violent were the passions and ill-feelings aroused, and so decided was the King's inclination towards the Bedford and Cumberland faction, that but for the Chancellor's controlling influence, the whole scheme of administration must now inevitably have been broken to pieces. He once more succeeded in mitigating the sharpness of the fraternal altercations, and in convincing the two brothers of the necessity of reconciliation and cooperation to withstand the new-grown factions of opposition<sup>4</sup>. Though he had often warned the Duke of Newcastle of the danger and impolicy of his frequent quarrels with his subordinates and colleagues, and of the unfavourable inferences which would be drawn therefrom by his enemies, he gave him steady support at the present crisis. He advised him to treat the King's disfavour and neglect at their proper value, as unreasonable and temporary, and to ignore them; and strengthened by the Chancellor's strong arm and friendly counsels, the Duke was enabled eventually to weather the storm. He addressed a humble letter of expostulation and justification to the King<sup>5</sup>, and was some

<sup>1</sup> pp. 113, 116; Walpole's *George II*, i. 193. According to the Princess of Wales, the Duke of B. relented; and in an interview with the King in the following summer unsaid a great part of what he had told the King concerning the Duke of Newcastle, and attributed it to misinformation. Dodington's *Diary*, 143.

<sup>2</sup> See Dodington's *Diary*, 209, 222.

<sup>3</sup> pp. 113, 115. Walpole's *George II*, i. 199. The Duke of Newcastle was reported to have said to the Duke of Marlborough, "My Lord, the King has not spoke to me since your brother-in-law [the D. of B.] has been out." Rigby to D. of B., *Bedford Corresp.* ii. 96.

<sup>4</sup> pp. 95 sqq., 105 sqq., 111, 112.

<sup>5</sup> p. 115; printed in Coxe's *Pelham*, ii. 401.

little time afterwards restored, as the Chancellor had foretold, to favour. Notwithstanding Lord Hardwicke's objection, who once more censured the choice of weak men to the exclusion of abler and more influential personages, and who desired the inclusion in the Cabinet of the Dukes of Devonshire and Rutland<sup>1</sup>, the Duke of Newcastle was gratified by the appointment of Lord Holderness to the vacant Secretaryship of State, who was expected to prove a good man of business and a docile subordinate<sup>2</sup>, and by that of Lord Granville to the Presidency of the Council, who now, with both claws and wings cut, was able neither to injure nor to soar too high, and who gave his support to the Duke's forward foreign policy<sup>3</sup>. At the same time, Lord Anson, who had married the Chancellor's eldest daughter, and had already for some time had the control of the navy, was made President of the Board of Admiralty; and the strength of the navy was restored next year to its former number of 10,000 seamen<sup>4</sup>.

Meanwhile, the course of events in another sphere, in the inner circle of the Court itself, had tended to the same political developments and equally to the disturbance of the administration. The King was now growing old, and no longer enjoyed his former good health. The advent of the Prince of Wales to the throne, attended by a complete change of ministers, appeared an event which could not be long delayed and which could not but exercise a depressing, as well as a disintegrating, effect upon the actual administration. The Prince had dressed his window with an attractive programme of government, which included the establishment of a numerous militia, the reform of official abuses, a diminished civil list and the abolition of political parties, in other words—reform, efficiency and economy<sup>5</sup>.

Some of the ministers, including Pitt, together with Bubb Dodington, a tenth-rate and fickle politician, who had resigned the treasurership of the navy to attach himself to the Prince, the Grenvilles, Lyttelton and Chief Justice Willes, had opened communications with Frederick; and his adherents had already chosen the places they would have under their new sovereign and kissed hands for their new offices<sup>6</sup>.

The Chancellor himself had no desire to prolong the tenure of

<sup>1</sup> pp. 102 sqq.; Coxe's *Pelham*, ii. 376.

<sup>2</sup> *Ib.* ii. 387.

<sup>3</sup> *Ib.* ii. 108, 124, 163; H. 63, f. 121; N. 39, ff. 362, 374.

<sup>4</sup> See above, p. 2.

<sup>5</sup> *Bedford Corresp.* i. 320; H. 522, f. 129.

<sup>6</sup> Coxe's *Pelham*, ii. 50, 167; *Parl. Hist.* xiv. 318 n.; Walpole's *George II*, i. 87, 201; *Letters*, iii. 45; Dodington's *Diary*, i. 8-13, 161, 230.

his laborious office into a new reign, and had little to fear, in his personal interests, from the accession to the throne of the Prince of Wales. But no man was more conscious of the dangers and disadvantages attending the open and permanent breach in the royal family, not only to the dynasty but to the Whig ministry, on the stability and strength of both of which he placed his whole reliance for the government of the country. While, therefore, he had never condescended to make any private advances towards conciliating the heir to the throne to himself personally, he had, whenever opportunity offered, used his utmost endeavours, often alone and in opposition to the rest of the ministers, to reconcile the Prince of Wales to the King<sup>1</sup>. Honesty of purpose and disinterested conduct of this kind must, it would be supposed, have met with some recognition; but the Prince of Wales, one of the weakest and most worthless characters that have ever sprung from the ranks of the British royal family, was only a judge of low motives and mean intrigues, and the Chancellor's well-meant and patriotic efforts were beyond his comprehension, and met with no gratitude and no return. On the contrary, as the Prince's residence became the rendezvous of every cabal, however unscrupulous, against the government, a personal animosity grew up against the Chancellor, as its chief support.

The situation was changed for the moment by the sudden and unexpected death of the Prince on March 20, 1751. The prospective Prime Ministers, Lord Chancellors and great officers of state saw their laurels wither before they could be placed upon their brow. The Princess and her children were reconciled to the King and the whole faction was broken up, while its members made haste to transfer their allegiance to the Pelhams<sup>2</sup>.

But a disturbing element of hostility to the administration from a part of the royal family still remained. The Duke of Cumberland had in former years rendered good and conspicuous service to his country. Alone, when scarcely more than a boy, he had driven back the tide of invasion and anarchy and suppressed a dangerous rebellion. If his generalship in the Netherlands had not been rewarded with success, it had at least the merit of honest endeavour; and failure had been excused by the insuperable and special difficulties of his

<sup>1</sup> See especially above, vol. i. 162 sqq.

<sup>2</sup> Dodington's *Diary*, 121. The Duke of Newcastle writes to the Chancellor on April 9, 1751, "Everything passed extremely well at the interview on Thursday night; the King continues to be perfectly satisfied with the Princess and is in raptures with the young Prince, who, he says, has taken a liking to *him*." H. 63, f. 242.

command. Without possessing any great claim to statesmanship, he had proved, by his courage and military spirit, a valuable supporter of his father's throne and dynasty, and a source of strength to the King's administration. But in later years, since the conclusion of the war, there had been a marked and unhappy change in the young Duke's character and public actions, probably the result of habits of constant self-indulgence and of a deterioration of morals, which had now thoroughly undermined his physical constitution<sup>1</sup>. The former victor of Dettingen and Culloden, who with youthful zeal, devotion to duty and single-minded purpose, had pressed on to the accomplishment of the great national work entrusted to him and imparted his ardour to a defeated army, the "conquering hero" whose triumph had called forth Handel's most spirited strains, had become a mere court intriguer, a backstairs politician, the tool of abler and less scrupulous persons, inspired no longer by great public motives but by petty jealousies, the instigator of cabals and the chief obstructor of the measures of his father's government. He had taken the part of Lord Sandwich, a man of disordered life and notorious principles, and now his intimate friend, in his intrigues against the Duke of Newcastle abroad in 1748, and together with the Princess Amelia, a meddling and mischievous woman, gave strong support to the Bedford and Fox faction<sup>2</sup>. He had long lost all his early popularity, and had become the object of general hatred and abuse, which had been encouraged by the Prince of Wales and which the Princess continued to instigate. This same year a bitter and libellous pamphlet, attributed to Lord Egmont, a leader in the late Prince's faction, was published against him, entitled *Constitutional Queries*, in which he was compared to Richard III, and which was ordered by Parliament to be burnt by the common hangman. According to Horace Walpole, on the Duke's showing the young Prince George one day a sword, "he turned pale and trembled, and thought his uncle was going to murder him<sup>3</sup>."

For these horrid suspicions, so wickedly propagated and circulated, there was not the smallest foundation; but the Duke, as Captain General, held the supreme military power, which he probably intended to use in securing the predominating political influence in case of a minority<sup>4</sup>. He began to give some anxiety

<sup>1</sup> p. 171.

<sup>2</sup> p. 87; *Life of Lord Shelburne*, by Lord Fitzmaurice, i. 58; Dodington's *Diary*, 143.

<sup>3</sup> *George II*, i. 106.

<sup>4</sup> Lord Waldegrave's *Memoirs*, 23.

to the ministers, who excluded him from the council of regency during the King's absence abroad, as long as possible. The Duke's ill-conduct and hostility, displayed not only against the administration, but against the Princess of Wales, had moreover important and far-reaching consequences; for owing to it, the ministers, fearing that the Duke would acquire an unfavourable influence over him if he were brought, as was suggested, to the King's palace, now acquiesced in the King's desire to leave the young Prince of Wales in his mother's care—a decision which involved a loss of control over the Prince's education and advisers, and proved hereafter the source of the greatest national misfortunes. On September 14, 1752, the Archbishop of Canterbury wrote to the Chancellor, "I have some reason to say that one of that bad man's principles [Bolingbroke] is already stirring in the Royal Family, viz. that a King of England is a King of his people, not of Whigs and Tories. This is a noble principle, it must be owned, and would to God it took effect truly; but what must be the consequence, when it is only made the vehicle of Jacobitism and tends to overturn a government which began, and can only be supported, on Whig principles<sup>1</sup>." On August 7, the Chancellor had himself urged upon the Duke of Newcastle the importance of the control of the young Prince's education and household: "Your Grace says you have nothing to do with the affairs of that family.... If you have nothing to do with them, I don't know who has. They are of a very serious consideration.... The filling of those places is a matter of the utmost importance<sup>2</sup>."

The Duke of Cumberland's attitude no doubt also influenced the character of the Regency Bill, which was passed through Parliament by the ministers on May 20, 1751, by which not the Duke, but the Princess of Wales, was appointed Regent in case of a minority, with powers limited by a council of which the Duke was made President<sup>3</sup>. This was a cause of bitter disappointment to the Duke, who had desired and expected the Regency for himself, and of renewed resentment<sup>4</sup>. He had, however, no real claim to the sole power and the Bill followed faithfully the spirit

<sup>1</sup> H. 251, ff. 63 sqq.

<sup>2</sup> N. 44, f. 39; H. 64, f. 245.

<sup>3</sup> H. 522, f. 216; Dodington's *Diary*, 104; Coxe's *Pelham*, ii. 169; Walpole's *Letters*, iii. 48, 52; cf. Walpole's *Reminiscences* (*British Prose Writers*, xxiv. 66), "The low ambition of Lord Hardwicke, the childish passion for power of the Duke of Newcastle, and the peevish jealousy of Mr Pelham, combined, on the death of the Prince of Wales, to exclude the Duke of Cumberland from the Regency."

<sup>4</sup> pp. 113 sqq.

of the constitution, according to which a regency had never, as of right, been granted to the next adult male member of the royal family. To the objection raised by the Opposition in the House of Commons to the division of the sovereign power, Charles Yorke replied by reminding the House that, while there was no good precedent of a female regency in a minority, no precedent existed of a regency without limitation except that of Richard, Duke of Gloucester, which was an unconstitutional usurpation<sup>1</sup>. The measure was no doubt, in the circumstances, a wise and prudent arrangement, and was followed as a precedent in 1765. But the Duke of Cumberland regarded the bill exclusively from the personal point of view, and as a retaliation on the part of the ministers for the support given by himself to the Bedford and Sandwich faction.

Much of his resentment fell upon the Chancellor, who had had a principal share in the preparation and passing into law of the measure, and who was deputed alone to inform him of its provisions on April 18, 1751, a disagreeable office such as was frequently laid upon him and of which he complains to the Duke of Newcastle<sup>2</sup>. The mutual esteem and collaboration in administration, which had existed between them for so long and so much to the public benefit, was now checked, and the Duke showed his displeasure by giving the cold shoulder to Col. Joseph Yorke, hitherto his favourite and devoted follower, while the Princess Amelia collaborated according to her capacity and refused the Chancellor a key into Richmond Park, of which she was Ranger<sup>3</sup>.

Every opportunity of revenge and of raising embarrassments for the government was now taken<sup>4</sup>. In March 1752, the Duke

<sup>1</sup> *Parl. Hist.* xiv. 1008, 1011; Walpole's *George II*, i. 125, 130.

<sup>2</sup> H. 243, f. 181. "H.R.H. the Duke of Cumberland's answer when I carried him the King's message with the sketch of the Regency Bill.—'I desire you will present my humble duty to the King, and return His Majesty my thanks for the honour he has done me by ordering this affair to be communicated to me; that I think it is necessary something should be done in it, and shall <sup>submit</sup> ~~be ready~~ (as it is my duty) to take such part in it as His Majesty shall judge proper for me.'" Cf. Walpole's highly coloured account, *George II*, i. 104. "The Lord Chancellor was deputed from the King to communicate the plan to the Duke. He went in a great fright....The Duke desired he would return his duty...and said 'for the part allotted to me I shall submit to it, because he commanded it, be that Regency what it will.' The Duke bade Mr Fox tell Mr Pelham this answer and remember the word *submit*; adding 'it was a material word; the Chancellor will remember it, however he reports it.'" Also pp. 115 sqq., 212; N. 189, f. 489.

<sup>3</sup> Walpole's *Letters*, iii. 97.

<sup>4</sup> See also Walpole's *George II*, i. 242, 250, here a good authority, if he can tell the truth, as he was in the secret of these intrigues.

handed to the King a list of supposed Jacobites who held office in Scotland<sup>1</sup>. A strict inquiry was held, and it was demonstrated that only a few disaffected persons were still in the public employment. We have already seen with what ill effects his influence was used upon the King in inciting him to unworthy and unjust suspicions and dislike of leading Scotsmen, to some of whom, like Lord Glenorchy, the King and government were under great obligations for their valuable support in suppressing the Rebellion<sup>2</sup>. The King was even led into some momentary feelings of enmity against the Chancellor himself and into some expressions of disregard; and together with his sister, the Princess Amelia, the Duke made constant attempts to poison the royal mind against the ministers; but these evil designs had fortunately no more serious results than occasional outbursts of the royal temper and short periods of estrangement. A special opportunity for attack was furnished by the disputes among the tutors and governors in the young Prince's household, and by a miserable accusation, brought in 1753 against Andrew Stone, formerly the Duke of Newcastle's secretary and now the Prince's sub-governor, and against Murray, the Solicitor-General, who had influence at Leicester House, and who belonged to a Jacobite family—his brother, the Earl of Dunbar, having been the Pretender's chief minister. They were charged with having, together with Johnson, Bishop of Gloucester, drunk the Pretender's health somewhere nearly a quarter of a century ago<sup>3</sup>. A cry was raised by the enemies of the administration that the Duke of Newcastle had, in these appointments, meditated some great Jacobite treachery, a notion which was even half credited by some of his supporters. On the Cabinet proceeding to investigate the matter, Fawcett, the principal accuser, wavered in his stories, failed to substantiate his accusations, and finally refused to sign his depositions, when the charge was very properly pronounced false and scandalous<sup>4</sup>.

A violent attack was made by the Duke of Bedford in the

<sup>1</sup> Coxe's *Pelham*, ii. 412, 416, 440; N. 41, f. 314; N. 42, f. 82.

<sup>2</sup> pp. 118, 181 and vol. i. 531, 553 sqq.

<sup>3</sup> Dodington's *Diary*, 167, 186, 193, 202; Coxe's *Pelham*, ii. 254; Walpole's *George II*, i. 289, 298; *Letters*, iii. 134, 146; *Bedford Corresp.* ii. 121; P. Yorke's *Diary*, Add. 35, 337, f. 116.

<sup>4</sup> H. 522, f. 226. According to Walpole (*George II*, i. 309), the Chancellor in his communication of the matter to the Duke of Bedford "seemed to own Mr Murray guilty." But whether innocent or guilty, the raking up of such ancient indiscretions was not a practice to be encouraged. The Duke of Bedford himself was reported formerly to have had Jacobite leanings.

Lords upon the government, on March 22, 1753, and especially upon the cabinet council, which he described as a "state-expedient borrowed from France," a "star-chamber," "an inquisition," "mysterious, secret, arbitrary, cruel." On making reference to certain communications between Fawcett and Lord Ravensworth, the originator of the charge, he was called to order by the Chancellor, who declared it unparliamentary to repeat a hearsay account of what had passed in council<sup>1</sup>, and on the conclusion of the Duke's speech easily answered these diatribes.

He showed that the cabinet was not a foreign instrument of oppression but one, the existence of which was on record in the Journals of Parliament. Nor in the recent investigation had it acted in any way as a judicial body, but had conducted the inquiry solely for the satisfaction of the government, and not for legal prosecution; while the oaths had been taken by the witnesses at their own request and had not been imposed by authority. He added that the King's permission had been given to all the cabinet ministers to answer any questions put to them. He then exposed the inconsistencies and contradictions of Fawcett, the accuser, and praised in high terms of appreciation the services of Stone and those of Murray to the government. He deprecated the interference of Parliament in the King's family, the management of which the Judges had declared to be the King's prerogative, and especially denounced the mean and shabby scraping up of forgotten indiscretions. "He reflected with pleasure on the many converts that had been made from Jacobitism and hoped that by raking into old stories, their Lordships would not prevent and discourage such change of principles; that it would make those, who were willing to come over to the pale of loyalty, dread parliamentary inquiries hanging over their heads; they would never think themselves safe; and it would be ungenerous to exclude men of any principles from enjoying the sunshine and blessings of such a reign and government. For his part, he hated names and distinctions, and to stifle any attempts for reviving them he would give his negation to the motion<sup>2</sup>."

<sup>1</sup> Cox's *Pelham*, ii. 261; cf. Walpole's *George II*, i. 316, "The Chancellor, who was to conduct the solemn drama of the day, took care to keep off all episodes that might interfere with the projected plan of action, and interrupted the two Lords [Ravensworth and Bedford] by laying it down for order that Lord Ravensworth must not repeat what he had only *heard* passed in Council. But this authoritative decision was treated as it ought to be by the Duke of Bedford, etc."

<sup>2</sup> Walpole's *George II*, i. 321 sqq. who calls these remarks "the Chancellor's hackneyed sophistries."



This attack on the government also failed completely, and the Duke of Bedford, going below the Bar for a division, had the mortification of finding himself followed by only three others<sup>1</sup>.

Intrigues and cabals thus fomented by so powerful a personage as the Duke of Cumberland, the King's favourite son, gave great anxiety to the ministers and often impeded their measures; but it must not be supposed that these troubles, or the constant disputes within the cabinet, which fill so large a place in the memoirs and correspondence of the time, monopolised the attention and energies of the cabinet. On the contrary, a series of great reforms were, during these last years of Henry Pelham's administration, conceived and accomplished, which must for ever distinguish this period as one of the brightest and happiest in our political history.

The great administrative reforms in Scotland, carried through with so much firmness and success by the Chancellor, have already been described. The intervention of the government was also at this time required in Ireland, where a political agitation of some interest and importance had been set on foot. Superficially, it had all the appearance of a great movement in favour of Irish independence from English control, but in reality it was essentially one of personal rivalry and competition. Henry Boyle, a grandson of the first Earl of Orrery, now over 70 years of age, had sat for forty years in Parliament and had held the offices of Chancellor of Exchequer and Speaker of the House of Commons for the space of twenty. With a large following in the Parliament, and supported by several great Irish families, he had long been one of the most powerful persons in Ireland and had acted, for a long period, though unrecognised officially, as the deputy of the English government in Irish parliamentary affairs. Lords Chesterfield and Harrington had prudently acquiesced in the large share of power and influence held by this great personage; so had likewise the Duke of Dorset during his former Lord Lieutenancy; and the responsibility for disturbing these relations was now attributed to Lord George Sackville, a son of the Lord Lieutenant, a man of some ability but, according to Walpole, "haughty,

<sup>1</sup> "I did expect," writes the Duke of Newcastle to Col. Joseph Yorke at the Hague, on March 30, 1753, "more congratulation from you, either public or private, upon the greatest day that ever any administration had in Parliament. The vilest calumnies detected, and the boldest and most unjust attempts against ministers, your particular friends, defeated, to the confusion of the actors and abettors, and to the honour of the administration and their friends. I shall never forget the obligation I have to your Father upon this occasion." N. 158, f. 384.

obstinate and overbearing," and whose name, a few years afterwards, obtained an unenviable notoriety. He was supported by the Primate, Dr George Stone, a brother of Andrew Stone, the Duke of Newcastle's former secretary and confidant,—a bishop whose ambition was too much centred in Irish politics. They became rivals to the Speaker and drew into their plans the Lord Lieutenant, who in his former tenure of office had been very popular, representing the hostility of the Speaker and his party to themselves as disloyalty to the Crown.

The quarrel broke out on the question of the royal assent to the disposal of the overplus towards the payment of the national debt, which the Speaker's party took the opportunity of repudiating as an infringement of Irish liberties. The principle, however, of the royal consent and control was this time established; but the dispute was by no means composed; and Lord Kildare, the eldest son of the Duke of Leinster, took the audacious step of coming to England and of presenting a memorial to the King against the Duke of Dorset's administration, to which a reply, drawn up by the Chancellor, was sent, not to Lord Kildare, who was passed over, but to the Lord Chancellor of Ireland, affirming in dignified terms the King's entire confidence in the Lord Lieutenant<sup>1</sup>. In December, 1753, the dispute was renewed once more. The Bill from England with the altered preamble, announcing the King's consent to the disposal of the surplus, was thrown out by a majority of five, and an alarming Protestant opposition to the government declared itself, in consequence of which Boyle, and those who held office under the Crown and had voted in the majority, were summarily dismissed, and a part of the surplus was employed by royal authority in the payment of the debt.

The struggle and agitation, however, continued for some time. No further surplus was allowed by the opposition to accrue; and the money was spent in lavish bounties on trade and on local improvements, while the administration of the Lord Lieutenant was interrupted by much disorder and by several serious and violent riots. In February 1755, however, the Chancellor and the Duke of Newcastle, recognizing the personal character of the dispute, disapproving of the Primate's and Lord George Sackville's conduct, and by no means desirous of sacrificing the peaceable administration of Ireland to the political jealousies and ambitions of these two persons, or of losing or dividing the Protestant interest, "acquainted

<sup>1</sup> pp. 125, 133. H. 66, f. 110.

the Duke of Dorset that he was to return no more to Ireland," and obtained for him instead the office of Master of the Horse. He was succeeded by Lord Hartington. The Archbishop finally lost his influence, and was omitted next time in the number of the Lords Justices appointed on the departure of the Duke of Dorset from Ireland. The Speaker left the House of Commons and was created Earl of Shannon with a pension of £2000 a year; while a number of his followers obtained pensions or places, and the "patriots dismissed the woes of their country for which they had no longer occasion<sup>1</sup>."

The Chancellor had been kept well-informed of these events in Ireland through his old friend the Irish Chancellor, Lord Jocelyn, and his namesake, Sir William Yorke, the Lord Chief Justice, and had been largely responsible for the firmness shown by the government at first, as well as for the spirit of accommodation and compromise thought wise and necessary later. But there is little trace here of the courageous and vigorous statesmanship, which revived and rejuvenated Scotland. His intervention was restricted to the maintenance of order and to the support and strengthening of the government, or, to use his own words, "to maintain the King's just prerogative and the legal dependence of Ireland upon Great Britain, which I think essential to both nations; to support the credit, weight and authority of my Lord Lieutenant and to prevent any lasting divisions growing out of these difficulties amongst the Protestants in Ireland<sup>2</sup>." His action never seems to have extended beyond these limits. The abuse of the Irish pension list, indeed, invariably met with his strong disapproval, and it was kept rigorously within bounds during the whole period of his tenure of office. In 1757 it exceeded only by a little more than £5000 its amount in 1727; while shortly after his retirement, by 1763, it was nearly doubled. In 1761 the Duke of Bedford, upon quitting his Lieutenancy, obtained Irish pensions to the amount of £2900 for his sister, his friends and dependants. "I freely confess," writes Lord Hardwicke in reply to the Duke of Newcastle, on February 23, "that I utterly dislike the whole. £2900 per annum for private friends and dependants is monstrous. How can we wonder that those people are ready to run into all

<sup>1</sup> Walpole's *George II*, ii. 3, 10, 18, 23, 39, 183, and for the whole, i. 278, 354, 363, 367, 389; Coxe's *Pelham*, ii. 283, 429; *Bedford Corresp.* ii. 143, 165; Lecky's *Hist. of England* (1883), ii. 430 sqq.; H. 257, f. 330.

<sup>2</sup> p. 133.

kinds of faction when we take all ways to provoke them, and drive them mad<sup>1</sup>?" But the fundamental evils of the Irish government—the injurious and wasteful system of finance, the difficulties and dangers arising from the separate legislatures, and from the division of power between the crown officials and the Irish Protestant leaders—do not seem to have been considered by him as problems of practical statesmanship; though such mischiefs, together with the necessity of uprooting an old and rotten civilisation, and of the opening up of the natural resources of Ireland to England and to the world, offered opportunities of great and far-reaching reforms. If similar methods, indeed, had been applied here that were employed in Scotland, and at this early stage, as great results and as lasting benefits would in all probability have followed. The necessity for reforms, however, had not been forced upon the attention of those in power by a sudden crisis, which threatened the throne and the central administration itself, such as the Jacobite Rebellion of 1745; and the early death of Henry Pelham in 1754, followed soon afterwards by the retirement of the Chancellor from an active official part in public affairs, interrupted the reign of domestic reform, the Duke of Newcastle's government which followed, being preoccupied with resisting attacks from rivals and opponents and with the great struggle with France for empire.

In England itself, on the other hand, great energy and wisdom were shown by the ministers in the spheres of administration and of legislation. Severe, and what is more important, efficacious measures were passed to control the terrible gin traffic<sup>2</sup>, which were the foundation for all subsequent legislation. A new police was instituted, which prevented to a great extent the abominable outrages and crimes of violence in the streets; and a whole series of beneficial enactments for the suppression of lawlessness and brutality, for maintaining public order and for protecting property, which included the defence of the shipwrecked from plunder, became law. The exact share which the Chancellor had in these administrative reforms does not now appear, but it was probably a principal one. Henry Fielding, the famous novelist and the London magistrate, whose firmness and energy were chiefly instrumental in suppressing crimes of violence, received much encouragement

<sup>1</sup> N. 234, f. 215; H. 72, f. 197; H. 52, f. 109; *Bedford Corr.* ii. 273; Walpole's *George III*, i. 268.

<sup>2</sup> The act of 1736, which amounted to a total prohibition, had proved an entire failure, vol. i. 133.

from him and dedicated to him his well-known 'Inquiry' in 1750<sup>1</sup>. In 1753 a sum of £600 was placed in Fielding's hands by the government, and employed by him to such good purpose, that in a short time the gangs of thieves were broken up, and in the last two months of that year no single murder or street robbery occurred in London<sup>2</sup>. The Chancellor lent the weight of his authority—"the highest which doth now exist," wrote Fielding, "or which perhaps ever did exist in this Kingdom<sup>3</sup>"—to the suppression of the low gaming tables<sup>4</sup>, the centres of all kinds of brutality and vice; and a detestable plot was formed against his life by some of the miscreants, who profited by them, which was happily discovered and frustrated<sup>4</sup>.

Upon the conclusion of hostilities, the government set itself zealously to repair the damage caused by the war and to restore prosperity. Employment was found for soldiers discharged, in consequence of the reduction of the forces, by a great scheme of emigration which settled numbers of them in Nova Scotia<sup>5</sup>. Great financial reforms were carried through successfully. The national debt, which at the peace amounted to over seventy-eight millions, with an annual charge for interest of over three millions, and which Sir Robert Walpole had done little during the long years of his peaceful rule to reduce, was consolidated, diminished by 3¼ millions, and the interest gradually reduced to 3 per cent.—"the boldest, and most useful operation of finance, recorded in the history of this country<sup>6</sup>." A striking developement in the material prosperity of the country was inaugurated. A low rate of interest was maintained. The wages of labourers were higher in proportion than for many ages past<sup>7</sup>, and trade increased and expanded. A useful measure dealing with wills, initiated by the Chancellor, of which one clause prohibited a legatee being at the same time a witness

<sup>1</sup> See also H. Fielding to Lord H., July 21, 1749, sending his Charge to the Grand Jury of Westminster and his draft of a bill for the prevention of street robberies, H. 242, f. 334.

<sup>2</sup> Fielding's *Voyage to Lisbon*.

<sup>3</sup> Cf. vol. i. 126 H. Walpole even here manages by a veritable *tour de force*, which one cannot but admire, to get in an abusive antithesis: "His exceeding parsimony was qualified by his severity to, and discouragement of, usurers and gamblers; at least, he endeavoured to suppress that species of avarice that exists by supplying and encouraging extravagance." *George II*, i. 161.

<sup>4</sup> pp. 108-110.

<sup>5</sup> See above, p. 8.

<sup>6</sup> Sir J. Sinclair, *Hist. of the Public Revenue*, i. 448 sqq.; Coxe's *Pelham*, ii. 89; and see above, p. 1.

<sup>7</sup> Malthus, *Principles of Political Economy* (1820), 279.

to a will, was passed in 1752<sup>1</sup>. The alteration of the calendar to the new style was another sensible reform, supported by the Chancellor<sup>2</sup>, which exposed the government to some unpopularity in the country.

In the House of Lords, he gave his assistance to several important measures. He spoke strongly in support of the Mutiny Bill, brought into the Lords on March 15, 1749, and opposed on account of the unpopularity of the Duke of Cumberland, and the additional power it was thought to give to the Commander-in-chief of the army, when he reviewed the history of the standing army from the Restoration. He argued that, far from being a menace, that force had, since that time, been the great defence of the constitution; and those, who had raised a clamour against it, had been men far from zealous in the cause of national liberty and religion, and had done so with treason in their hearts. The results of compelling King William III to disband the troops after the Treaty of Ryswick had been disastrous; on the death of Charles II of Spain we had no troops to send thither, and thus that country fell under the power of France. As to a militia, it could by no means be regarded as a sufficient defence; and of that a convincing proof was afforded in the late rebellion when, though most men believed that popery as well as slavery would have been the certain consequence of the Pretender's success, yet but a faint resistance was made in any part of the kingdom by the people, so faint that had not a body of regular troops been obtained from abroad, the rebels might have gained possession of the capital without any opposition. He concluded by supporting the death penalty for desertion, and the revision of verdicts by courts-martial<sup>3</sup>. The question of the liability of half-pay military officers to martial law was long debated. The Judges were divided in opinion, but the Chancellor pronounced in favour of it, and the clause was carried<sup>4</sup>.

Another measure, the Jews Naturalisation Bill, received the Chancellor's strong support. This was a small enactment to enable Parliament to naturalise individual Jews who applied for it. It was founded on clear principles of liberty and justice, and

<sup>1</sup> 25 George II, c. 6; *Statutes at Large*, xx. 323. and see Lord H. to the Lord Ch. of Ireland on this question, H. 243, f. 278.

<sup>2</sup> Coxe's *Pelham*, ii. 178.

<sup>3</sup> Below, pp. 84 sqq.; *Parl. Hist.* xiv. 450.

<sup>4</sup> *Ib.* xiv. 461 n.; Coxe's *Pelham*, ii. 66; for the Chancellor's notes of the debate on March 18. see H. 528, ff. 376-382.

was conceived with the object of aiding the developement of trade in England at the conclusion of the war, and "to bring in a greater number of rich Jews to reside amongst us." The Jews had been naturalised in almost all the European states, and were among the most useful, peaceable and industrious people in the kingdom. They could already become denizens by Letters Patent from the Crown, by which their descendants might inherit land from them ; but they were still debarred from inheriting collaterally, which implied a retrospect<sup>1</sup>. These considerations, however, were overborne by prejudiced popular opinion, and a wave of anti-semitism swept over the country, bearing down all common sense before it. The measure raised violent religious, commercial and aristocratic jealousies. The lower and more ignorant clergy declared the Christian faith to be dishonoured and endangered ; the merchants feared competition in trade, the land-owners dispossession from their estates, and the governing class that money, and not family, might become the passport to power.

The Bill passed without much opposition in the Lords in April 1753, largely through the Chancellor's influence, who had persuaded most of the bishops to support it, and had inserted a clause disabling all Jews from purchasing livings or presenting to them<sup>2</sup>, and in spite of the Duke of Bedford's warning that England would become a second Canaan, divided out among the Jews. In the Commons, however, on the second reading on May 7, it was attacked furiously. To allow the Jews to settle in England, it was said, was to rob Englishmen of their birthright as Christians and to fly in the face of Providence, which had ordained that they should be a scattered nation. The extreme peril of "an Ahasuerus upon the throne," with an army of foreign mercenaries at his disposal, was demonstrated. According to Admiral Vernon, circumcision would soon become compulsory. From voting and choosing members of Parliament, it was affirmed, the Jews would become members of Parliament themselves, though to none does the possibility of a Jew prime minister seem to have occurred. Several London merchants of substance presented a petition in favour of the Bill, calculated, in their opinion, to increase the trade and credit of the kingdom. But the Lord Mayor and corporation of the City offered one against it, and the opposition to the measure appeared to increase in strength.

<sup>1</sup> See p. 130; H. S. Q. Henriques, *The Jews and the English Law*, 241.

<sup>2</sup> H. 3, f. 247; Walpole's *George II*, i. 357.

The Bill was, however, carried through Parliament by the ministers<sup>1</sup>, and great pains were taken by the Chancellor to explain its real nature and overcome the prejudices against it<sup>2</sup>. The feeling in the country, however, remained so strong, that it was soon seen that the Jews would be injured, instead of benefited, by the law, and that no Jew would venture to apply for his naturalisation. A number of pamphlets appeared in violent abuse of the measure<sup>3</sup>. England, it was declared, would be known as "little Jewry." Less brawn, ham and bacon would be sold, and duelling would increase. "The rage of the people," it was said, "was ungovernable<sup>4</sup>." Those, who had supported the Bill, incurred the greatest unpopularity, and their seats in Parliament were jeopardised in consequence. The Bishops were attacked and abused when travelling in their dioceses. The Archbishop of Canterbury, while at Lewes, writes to the Chancellor of being "a little insulted with the Jews. This ridiculous prejudice is trumpeted all over England, in which I am not so much concerned for its influence on the next election, as I am to see how easy it is to raise this foolish people to an inhuman and savage spirit, in spite of all the light and moderation, which has of late years prevailed<sup>5</sup>." The Bishop of Norwich was mobbed by rude youths in his diocese, who called upon him, instead of confirming them, to circumcise them. A general election was at hand, and the government, perceiving that persistence in a trivial matter might have serious and far-reaching consequences, decided wisely to repeal the Act; and at the beginning of the new session, on November 15, 1753, introduced a Bill for that purpose in the House of Lords.

Here the Chancellor in advising this concession to popular clamour and prejudice appeared in a new light. He pointed out the inconveniences and injury which the Act, in the state of public opinion, would inevitably bring upon the Jews, whom it had been desired to benefit, and the dangers to which they would be exposed from the exasperation of the people, which, he believed, would not soon subside but, indeed, had only been hitherto restrained by the expectation that the Act would be repealed. If this had been a law on which the national security and happiness had depended, he would not have yielded; for he had such an opinion of the good

<sup>1</sup> *Parl. Hist.* xiv. 1365.

<sup>2</sup> p. 127.

<sup>3</sup> See G. B. Hertz, *British Imperialism in the 18th Century*, 69, for an account of these.

<sup>4</sup> pp. 127-132; *Parl. Hist.* xiv. 1431.

<sup>5</sup> H. 251, f. 93; p. 132.



sense of the people, that he should have expected their opposition to cease when they saw the utility of the measure. Such a case had occurred at the beginning of the late reign, when it was necessary for Parliament to suppress the blind, persecuting spirit that then prevailed in the Established Church, and when it would have been madness to have yielded to madmen<sup>1</sup>. What was the consequence? As soon as the people had time to consider and to cool, they saw their folly and approved of the action of the legislature. The Bill now before their Lordships, however, was not of this importance, and the government would act wisely in yielding to the popular humour. The Act to prevent the spreading of cholera in England, in the seventh year of the late reign, was a similar case to the present. Though the regulations imposed therein were extremely proper, yet the enemies of the government made them an occasion for exciting a popular clamour. The cry was everywhere, "No barrack hospitals! No red-coat nurses!" and the ferment among the people became general. Accordingly the legislature, perceiving that the law had been made a tool of faction, repealed the clauses in the next session. They should now follow this example, and disarm the enemies of the government of the only weapon they had to use against them. "If it were of much greater importance than it is," he continued, "I should be for repealing it; for however much the people may be misled, yet in a free country, I do not think an unpopular measure ought to be obstinately persisted in. We should trust the people as a skilful and humane physician would trust his patient: if they nauseate the salutary draught we have prescribed, we should think of some other remedy, or we should delay administering the prescription till time or change of circumstances has removed the nausea." This might happen in the present case. The people might grow cool; they would then consider the consequences of the Act, had it subsisted, without prejudice, would discover that their apprehensions were groundless, and then would as universally desire its revival, as they formerly had its repeal. The Chancellor concluded by declaring that on no consideration whatever would the government go further than yield on this small matter. The Plantation Act, 13 George II, c. 7, by which Jews might obtain naturalization in the Colonies after a residence of seven years, and against which it was now sought [by the Duke of Bedford] to raise a clamour, would be maintained

<sup>1</sup> The allusion is to the Bill against Occasional Conformity, and to the Schism Act, passed in Anne and repealed in George I.

intact; for any other course would entail a gross breach of public faith, which would have fatal consequences<sup>1</sup>. As to the repeal of the Toleration Act, or any measures of persecution against the Jews or any other religious sect, he had too high an opinion of the good sense of the people to believe that they would countenance such designs<sup>2</sup>.

The Bill, accordingly, after debate in the Commons, was repealed, the preamble stating as the cause the "discontents and disquiets," which had been raised in the minds of the King's subjects. Another good measure of a similar kind, to allow the naturalization of foreign Protestants, after passing through several stages in the House of Commons in 1751, was likewise for the same reasons abandoned<sup>3</sup>.

The Chancellor's attitude towards another subject of reform, but of much greater importance, was very different. The famous Marriage Act, 26 George II, c. 33, hereafter always associated with his name, forms one of the chief landmarks in the history of the marriage laws. It was passed, as is well known, to put a stop to the extraordinary abuses arising from the so-called Fleet marriages, by which young persons, without due consideration of the consequences, often in a state of intoxication or intimidated by threats, hastily concluded unsuitable and clandestine alliances. Such marriages, soon repented of, proved the ruin of those who had become entangled in them; and kept secret, disturbed the happiness and legal status of whole families, when discovered at a later date. The registers were easily falsified, often antedated for the convenience of the parties, liable to be sold, dispersed or destroyed<sup>4</sup>, and though they might be produced, as might other evidence, for the purpose of proving a marriage, they were not admitted as legal records<sup>5</sup> in the Courts of Justice.

<sup>1</sup> An attempt in this direction in the House of Commons on December 4, 1754, was defeated by 208 to 88. Walpole's *George II*, i. 364.

<sup>2</sup> *Parl. Hist.* xv. 99; Walpole's *George II*, i. 360; *Bedford Corresp.* ii. 138; N. 48, f. 213.

<sup>3</sup> Coxe's *Pelham*, ii. 180.

<sup>4</sup> See the entries quoted by J. S. Burn, *Registrum Ecclesiae Parochialis*, 229.

<sup>5</sup> Burn, *Hist. of Fleet Marriages*, 127 sqq.; J. T. Hammick, *Marriage Law* (1887), 11 n.; Peake's *Nisi Prius Cases*, 137, 231. They were rejected by Lord Chief Justice Kenyon who in 1792 said, "there was a tradition in Westminster Hall, that when the books of the Fleet were produced before Lord Hardwicke, he would not receive them in evidence, but cut them to pieces in court." On the other hand, it was stated by counsel in another case, *Lloyd and Passingham*, in 1826, that such registers "were received by another high and enlightened individual, rarely equalled in point of legal knowledge, never at any period surpassed, I mean by the celebrated Lord Hardwicke."

The number of persons, who were united by these irregular marriages, was enormous. Over a hundred couples were sometimes joined by a single clergyman in a single day. John Gainham between 1709 and 1740 "solemnized" 36,000 marriages; the Reverend Alexander Keith, at Mayfair Chapel, on an average 6000 yearly, and on Sunday, March 24, 1754, the day before the Act came into force, "near 100 pair had been joined together." Walter Wyatt, a Fleet parson, earned £75. 12s. in one month,—October, 1748<sup>1</sup>. A female correspondent, who signs herself "Virtuous," and whose letter is printed in the *Gentleman's Magazine* of February 1735, complains "of the many ruinous marriages that are every year practised in the Fleet by a set of drunken, swearing parsons with their myrmidons, that wear black coats and pretend to be clerks and registers of the Fleet, plying about Ludgate Hill, pulling and forcing people to some peddling ale-house or brandy shop to be married, even on Sunday, stopping them as they go to the church. Not long since a young lady was deluded and forced from her friends, and by the assistance of a very wicked swearing parson, married to an atheistical wretch, whose life is a continual practice of all manner of vice and debauchery. Another young lady was decoyed to a house in the confines of the Fleet by a pretended clergyman; Dr Wryneck immediately appeared and swore she should be married; or if she would not, he would have his fee and register the marriage from that night. The lady to recover her liberty left her ring as a pledge that she would meet him the morrow night<sup>2</sup>." "In walking along the street in my youth," writes Thomas Pennant in his account of London<sup>3</sup>, "on the side next to this [*i.e.* the Fleet] prison, I have often been tempted by the question, *Sir, will you be pleased to walk in and be married?* Along this most lawless space was hung up the frequent sign of a male and a female hand conjoined, with *Marriages performed within* written beneath. A dirty fellow invited you in. The parson was seen walking before his shop; a squalid profligate figure, clad in a tattered plaid nightgown, with a fiery face, and

<sup>1</sup> *Gent. Mag.* xxiv. 141; J. S. Burn, *Hist. of Fleet Marriages* (1834), 20, 54; *Parl. Hist.* xv. 19, 42; G. Howard, *Matrimonial Institutions* (1904), i. 440, where a detailed description of the traffic and of the consequent disorders and scandals will be found.

<sup>2</sup> Vol. v. 93; J. S. Burn, *Registrum Ecclesiae Parochialis*, 118; see also the description of the parson in Sir Charles Grandison, Letter xxx.

<sup>3</sup> (1793) 232; see also the instances mentioned in *Lettres d'un Français* (1745), i. 81-2.

ready to couple you for a dram of gin or roll of tobacco. Our great Chancellor, Lord Hardwicke, put these *daemons* to flight, and saved thousands from the misery and disgrace, which would be entailed by these extemporary thoughtless unions."

Nor was it only the young and reckless that were exposed to these evils and mischiefs. In the case of *Bennet and Spencer v. Wade* for example, which came before Lord Hardwicke in 1742, Sir John Leigh, a helpless, drunken old man, had been imposed upon by his apothecary who caused him to marry his daughter of 16, procuring a Fleet parson to perform the ceremony and obtaining settlements, which were, however, set aside by the Chancellor, and the estate conveyed to the heirs at law<sup>1</sup>.

The gross abuses and hardships, arising from this license and confusion, had frequently been brought to the notice of the Chancellor, when presiding in the Court of Chancery, and had often formed the subject of his remarks from the Bench<sup>2</sup>; and the scandal of these proceedings had lately been brought in a special manner before the public by the case of *Cochrane v. Campbell*, which came on appeal before the Lords from a Scottish court, in which a man, after a supposed marriage of thirty years, was claimed by another woman on the strength of one of these irregular contracts. The case was taken up by Lord Bath, and on January 31, 1753, the Lords directed the twelve Judges to draft a Bill which, however, not giving satisfaction, the Chancellor brought in his own measure, on March 19, 1753.

In its final form it provided that, except in the case of Jews, Quakers and the Royal Family, who were exempted, a marriage in England was only valid when performed by a clergyman in orders, according to the Anglican liturgy, and after the banns had been published in the parish church for three successive Sundays, or by special license, such licenses not being obtainable by minors without the consent of their parents or guardians; while a license from the Archbishop of Canterbury alone permitted the ceremony to take place elsewhere than in the parish church. Some attempts had already been made to suppress the abuse by inflicting fines on the offending clergymen but without success<sup>3</sup>, and by the Act they were now made liable to transportation. Provisions for the strict

<sup>1</sup> H. 671, f. 566; Dickens, i. 84-5. <sup>2</sup> *E.g.* pp. 447, 469, 471, 475 and see vol. i. 121-4.

<sup>3</sup> Bills had been brought into the House of Commons in 1718 and 1735; see also 6 & 7 Will. III, c. 6 and 7 & 8 Will. III, c. 35; and the able tract of Dr Henry Gally, *Some Considerations upon Clandestine Marriages* (1750), where the remedy provided by the Act was recommended.

keeping of the parish registers were also included, the falsification of which was made a felony to be punished by death. The Act contained, moreover, a clause forbidding any suit or proceeding in the ecclesiastical courts to compel a celebration of marriage *in facie ecclesiae*, by reason of any contract entered into after the date of the enacting of the new statute<sup>1</sup>.

That a remedy had not been found and applied before to scandals and abuses of such magnitude is surprising, and still more strange must appear the opposition and hostility with which the measure was received from various quarters. Blackstone in his second edition of the *Commentaries*, of 1766, while allowing it to be a remedy for inconvenience in private families, argues that "restraints upon marriages, especially among the lower class, are entirely detrimental to the public by hindering the increase of the people; and to religion and morality, by encouraging licence and debauchery among the single of both sexes, thereby destroying one end of society and government<sup>2</sup>."

In Parliament, a violent opposition was organised against the Bill, which developed into an audacious attack upon the Chancellor himself, and was supported by appeals to the most ignorant popular prejudices. In the Lords it was assailed, amongst others, by the Duke of Bedford, on May 4, 1753, who complained of having been desired not to interrupt the proceedings, and of being deprived of opportunity to debate against it in committee. He denounced it as an obstruction to marriage, an injustice to Roman Catholics and Nonconformists, as a measure beyond the powers of the legislature, contrary to the Gospel and, last but not least, increasing the power of the Court of Chancery<sup>3</sup>.

In the Commons it was received with great hostility. It was opposed by young Charles Townshend, the second son of the third Viscount Townshend, celebrated for his wit and oratory—afterwards the corrupt Chancellor of the Exchequer in Pitt's administration of 1766, and the minister responsible for the fatal American taxation—who drew a harrowing picture of a younger son prevented from marrying an heiress by a hard and unfeeling parent, though a year after the passing of the Act he showed these alarms to be quite

<sup>1</sup> *Statutes at Large*, xxi. 124, and for the Chancellor's further explanation of some of its provisions see pp. 134-6.

<sup>2</sup> There is considerable significance in the fact that this sentence does not occur at all in the first edition of 1765, written, no doubt, during Lord Hardwicke's lifetime.

<sup>3</sup> Notes of the debate in Lord Hardwicke's handwriting and objections, H. 529, ff. 119 sqq.

unfounded by himself marrying a rich widow and coheir of the second Duke of Argyll. "A gentleman marrying a beautiful young girl of little or no fortune," he went on, "is generally so much laughed at by his companions, that no man would choose to have it made public beforehand..., and the necessity of his doing so may very probably prevent his making her happy, and induce him to render her miserable by debauching her!". "It shocks the modesty of a young girl," declared Nugent, another speaker, "to have it proclaimed through the parish that she is going to be married; and a young fellow does not like to be exposed so long beforehand to the jeers of all his companions<sup>2</sup>." "Sir," continued Charles Townshend, "I must look upon this bill as one of the most cruel enterprizes against the fair sex, that ever entered into the heart of man; and if I were concerned in promoting it, I should expect to have my eyes torn out by the young women of the first country town I passed through, for against such an enemy I could not surely hope for the protection of the gentlemen of our army." A month was far too long for a loving couple to wait for the completion of their wishes, and the Bill would undoubtedly promote fornication. "Were new shackles," he demanded, "to be forged to keep young men of abilities from rising to a level with their elder brothers?"..."If," however, the young orator went on, with impertinent reflexion upon the Chancellor, "this bill could anyway contribute to secure our rich heiresses to the eldest sons of noble reduced families, the argument might have some weight; but as a rich lord is as fond of having his eldest son married to a rich heiress as any poor lord can be, and as an avaricious father always will, and the Court of Chancery, or a guardian, must always prefer the former, the bill will have quite a contrary effect."

Pamphlets in violent opposition were scattered broadcast<sup>3</sup>. John Shebbeare, the hack writer for the Tories, made, like Charles Townshend in Parliament, his *début*, in letters, on this occasion, with *The Marriage Act*, a novel, written "in defence and for the service

<sup>1</sup> Cf. H. Walpole to Conway (*Letters*, iii. 160), "How would my Lady Ailesbury [Conway's wife] have liked to be asked in a parish church for three Sundays running? I really believe she would have worn her weeds for ever, rather than have passed through so impudent a ceremony." This extreme delicacy in the author of letters and memoirs, many passages of which can only be represented by asterisks, is rather startling.

<sup>2</sup> *Parl. Hist.* xv. 19, 49 sqq.; see also below, p. 120.

<sup>3</sup> G. E. Howard, *Hist. of Matrimonial Institutions* (1904), i. 406-7, where some of these are enumerated.

of the fairest objects of creation," and containing first a very obsequious dedication to the Duke of Bedford. In the course of the tale, Mr Narrowbottom, the needy pedagogue, declares, "This act will throw all the money into the hands of the nobility, who, purchasing the boroughs, will choose what Commons they please, by which means they will become the representatives of the Lords and not the People; the...[King] will be a mere cypher, a kind of pensioner of the Lords." Further on, the evils of the Act are viewed under another aspect. "Why, really, my Lord," says Lucy [my Lord Sapplin's mistress], "matrimony has seldom been a prejudice to us, who enjoy the company of gentlemen without that clog, and this marriage law bids fair to improve our advantage." A large portion of the story turns upon the woes of Mr Barter's daughter, who, under the Act, is forced by her parents to marry an unpleasing baronet. In the second volume, Mr Thoroughgood, "the good old man," discourses on the iniquities of the Act which, he declares, must end in "universal adultery." The Chancellor is represented pronouncing in favour of forged documents, "with that equity which ever attends his decisions"; a conscientious clergyman, who has performed the nuptial ceremony contrary to the Act, pleads eloquently to the judge and is sentenced to transportation, and the healths of the Duke of Bedford and Mr Fox are drunk, whose portraits, it is declared, should be placed, like those of guardian angels, by every virgin's bedside<sup>1</sup>.

This singular and extravagant attack may be further followed in the pages of Horace Walpole, a close friend and adherent of the Bedford and Fox faction, in whose family there were several examples of these irregular marriages<sup>2</sup>. "Whether from mere partiality to an ordinance thus become his own," he writes, "or

<sup>1</sup> Thos. Birch to Lord Royston, September 14, 1754, "Deputy Hodges, the bookseller on London Bridge, one of the city demagogues, and candidate for the post of Common Crier against the next vacancy, has in the press a romance intended to expose the consequences of it, and entitled *The Marriage Act*. The author is the well-known Dr Shebbear, who duped Nourse, the bookseller, out of notes for 200 guineas, by the pretence of selling him Lord Hyde's letters." A little later he reports that the book has been called in, Hodges sent for by Lord Holderness, obliged to cancel the invectives against the government and to give security. H. 50, ff. 211, 242 and below, p. 137. The author paid for his temerity by imprisonment; but the book appeared again the next year under the title of *Matrimony*, and again in 1766. He was the author of several other attacks on the government, and in 1758 was sentenced to three years' imprisonment and the pillory, the aim and object, according to Horace Walpole, of his life. At the accession of George III and the break up of the Whig power, he received a pension and supported the Court. Below, p. 380 n.; Walpole's *George II*, iii. 152.

<sup>2</sup> *George II*, i. 336-353; *Letters*, iii. 158, 160.

whether in shaping a law, new views of power opened to a mind fond of power, fond of dictating; so it was that the Chancellor gave all his attention to a statute, into which he had breathed the very spirit of aristocracy and insolent nobility. It was amazing in a country where liberty gives choice, where trade and money confer equality, and where facility of marriage had always been supposed to produce populousness—it was amazing to see a law promulgated that cramped inclination, that discountenanced matrimony, and that seemed to annex as sacred privileges to birth, as could be devised in the proudest, poorest little Italian principality; and as if the artificer had been a Teutonic Margrave, not a little lawyer, who had raised himself by his industry from the very lees of the people; and who had matched his own blood with the great house of *Kent*!...The new act set out with a falsehood, declaiming against clandestine marriages as if they had been a frequent evil<sup>1</sup>;... enjoined indispensable publication of banns, yet took away their validity, if parents, nay if even guardians, signified their dissent;... but guardians are a limb of Chancery!...Persons solemnizing marriages without these previous steps were sentenced to transportation...so close did congenial law clip the wings of the prostrate priesthood! And as if such rigour did not sufficiently describe its fountain and its destination, it was expressly specified that where a mother or a guardian should be *non compos*, resort might be had to the Chancellor himself for license....The speeches hitherto had only been flourishes in the air: at last the real enemy came forth, Mr Fox, who neither spared the bill nor the author of it...On the 23rd and 25th...Mr Fox...repeated his censures on the Chancellor, which old Horace Walpole reproved....28th...The Pontific power arrogated by the Head of the Law and his obstinate persisting to enforce a statute, by no means calculated or called for by general utility, was most indecent. The Speaker argued with great weight against the clause [annulling marriages contrary to the act.]...Mr Fox at one in the morning spoke against it for above an hour, and laid upon the chicanery and jargon of the

<sup>1</sup> Yet he gives several instances himself, *Letters*, ii. 338, iii. 85, and *George II*, ii. 155, where he writes, January 1756, "a little event happened that demonstrated the mischiefs produced by the Marriage Act. One Grierson, a minister, was convicted of solemnising matrimony contrary to that law. No fewer than 1400 marriages were said to be dissolved on his conviction, in which number 900 women were actually pregnant. The Chancellor triumphed in punishing so many who had dared to contravene his statute: a more humane man would have sighed to have made such numbers suffer even by a *necessary* law." The Chancellor's triumph is of course purely mythical. See J. S. Burn, *Hist. of the Fleet Marriages*, 141.



lawyers,[and] the pride of their Mufti. [He compared the Court of Chancery and its proceedings to a cobweb. "Touch a corner of it," he cried, "and the great Spider of the Law will be out upon you."]<sup>1</sup>...30th. The committee went upon the clause that gave unheard of power in the first resort to parents and guardians and thence to the Chancery, on the marriages of minors. Fox spoke with increasing spirit...He drew a most severe picture of the Chancellor, [comparing him to an ignorant country surgeon who, having pronounced that a woman's sore leg must be cut off, though another surgeon undertook to save the leg without any operation and he was himself convinced of his error, yet determined to carry the matter through to save his character]. Charles Yorke, the Chancellor's son, took this up with great anger and yet with preciseness, beginning with these words: 'It is new in Parliament, it is new in politics, it is new in ambition,' and drew a lofty character of his Father and of the height to which he had raised himself by his merit; concluding with telling Fox, how impudent it was to attack such authority, and assuring him that he would feel it<sup>2</sup>. Mr Fox replied with repeating the sententious words: 'Is it new in Parliament to be conscientious? I hope not! Is it new in politics? I am afraid it is! Is it new in ambition? It certainly is, to attack such authority!' Mr Pelham answered him well. Mr Fox once more replied, urging how cruel and absurd it was to force the bill down: that he knew he should not be heard by above one-third of the House, but would speak so loud that he would be heard out of the House; that from the beginning to the end of the bill, one only view had predominated, that of pride and aristocracy<sup>3</sup>. There was much truth in this... Captain Saunders, who had said that he would go and vote against the Bill, for the sake of the sailors, having once given forty of his crew leave to go

<sup>1</sup> The simile formed the subject of a caricature by Hogarth. It does not appear on what day of the debate it was employed, but probably as inserted in the text. See the attack of Wilkes upon Hogarth, vol. iii. chap. xxxii.

<sup>2</sup> See also p. 121.

<sup>3</sup> Walpole's accounts of the debates, at which he was probably present, appear, when there is any opportunity of comparing them with others, though coloured and prejudiced, to be the most accurate portions of his narrative. The following is not included in the text, as being obviously mere gossip: "At the very beginning, on the Duke of Newcastle's declining to vote in the Bill, the Chancellor told Mr Pelham, 'I will be supported in this, or I never will speak for you again.'... This breathed a little more than a mere spirit of obstinacy, and foretold a Bill not without an interested meaning: at least a legislator is uncommonly zealous for the common good, who forgets the philosophy of his character to drive on his honest ordinances by political menaces."

on shore for an hour and all returned married, was compelled by Lord Anson, the Chancellor's son-in-law, and his patron, to vote for it<sup>1</sup>....June 4th. The Marriage Bill was read for the last time. Charles Townshend again opposed it with as much argument as before with wit. Mr Fox with still more wit, ridiculed it for an hour and a half. [He denounced the measure in violent terms as one passed to maintain and increase aristocratic power, as one which would expose the whole female sex to perils unknown before, encourage vice and immorality, reduce the population, endanger even the existence of the nation, and violate, besides the law of nature, the divine law, 'Whom God has put together, let no man put asunder.'] Notwithstanding the Chancellor's obstinacy in maintaining it and the care he had bestowed upon it, it was still so incorrect and so rigorous, that its very bodyguards had been forced to make, or to submit to, many amendments<sup>2</sup>...; ...however, he finished with earnest declarations of not having designed to abuse the Chancellor, and with affirming that it was scandalous to pass the Bill,—but it was passed by 125 votes to 56.”

The Chancellor was by no means conciliated by these “earnest declarations,” and this tardy repentance on the part of Fox. The personal insinuations and abuse he might have passed over in contempt; but the Lords as a body had been held up as the oppressors of the people<sup>3</sup>, and the majesty of the Law,—the King, the Fountain of Justice, whom he represented, had been attacked and insulted in his person by a member of the administration. On the 6th of June, the Bill having passed the Commons with several amendments, the debate was renewed in the Lords. Lord Granville, who had announced his intention of opposing the Bill, and had been specially requested to attend by Fox, remained away, fearing

<sup>1</sup> Cf. Keith, the Mayfair marriage broker's statement in *Observations on the Act for Preventing Clandestine Marriages* (1753), p. 24, “I remember once on a time I was at a public house at Radcliff which then was full of sailors and their girls; there was fiddling, piping, jigging and eating; at length one of the tars starts up and says, ‘D—n ye Jack,...I will have my partner.’...The joke took and in less than two hours ten couple set out for the Fleet....They returned in coaches, five women in each coach, the tars some running before, others riding on the coach box and others behind. The cavalcade being over, the couples went up into an upper room, where they concluded the evening with great jollity....My Landlord...said those things were so frequent that he hardly took any notice of them.”

<sup>2</sup> *Parl. Hist.* xv. 74; according to the *Lords Journals*, with the exception of the useful clauses relating to the keeping of the registers and providing the death penalty for deliberate falsification, these were immaterial.

<sup>3</sup> Lord Egmont, though one of the opposition, had separated himself from these unworthy tactics and expressed his disgust. *Parl. Hist.* xiv. 1420.

some severe reprisals<sup>1</sup>; but the Duke of Bedford again resumed his attacks upon the whole Bill, when he was interrupted by the Chancellor, who reminded him that the proper course at this stage was to confine his criticisms to the amendment. The Duke appealed to the House, but receiving no encouragement, retired from the struggle, emphasizing his objections to the amendment from the Commons which restricted the operation of the Act to England, regretting to see himself so ill supported, and lamenting that a Bill of such importance should have been *crammed down*, and forced through, Parliament. At the conclusion of the debate, the Chancellor rose<sup>2</sup>, "and began," writes Thomas Birch, who was a spectator of the scene, "a most spirited speech, of near three quarters of an hour, with declaring his concurrence to all the amendments, though some of them evidently weakened the Bill as sent down from that House, since the substance of it was of so much moment to the nation and these defects might be supplied by a subsequent one. He hoped their Lordships would act as their predecessors had done in the case of the Act of Succession under King William, (if he might compare great things with small), when the Commons, who were generally thought ill-affected to it, clogged it with many impracticable limitations, in order to prevent their Lordships from passing it, who, on the other hand, wisely consented to the whole, for the sake of securing the Succession itself, resolving to wait for some future opportunity to retrench the exceptionable clauses connected with it. He then expressed his surprise at the Duke of Bedford's complaint of the Bill's having been *crammed down* and forced through the two Houses, which had been brought into that of their Lordships' towards the end of January and lain five weeks before the Commons. And he could not avoid declaring his astonishment that a Bill so long called for, and so often attempted, and now at last introduced not by a single Lord, but the whole House, prepared by the Judges, improved by the almost joint sense of their Lordships, authorized by the concurrence of the reverend bench and

<sup>1</sup> *Bedford Corresp.* ii. 126; T. Birch to P. Y. printed in *Parl. Hist.* xv. 84.

<sup>2</sup> "At last," continues Walpole, *George II*, i. 348, "the Chancellor—not as he has been represented, in the figure of *Public Wisdom Speaking* (see below, p. 529), but with all the acrimony of wounded pride, of detected ambition and insolent authority. He read his speech; not that he had written it to guard himself from indecency, or that he had feared to forget his thread of argument in the heat of personality: he did not deign an argument, he did not attempt to defend a bill so criticised. He seemed only to have methodized his malice and noted down the passages where he was to resent, where to threaten."

drawn up with a retrospect to past offences, should have been styled out of doors an *absurd*, a *cruel*, a *scandalous* and a *wicked* one."—He allowed conscience and candour to the Duke of Bedford, in his opposition to the Bill, but what he had to complain of had occurred without those walls, and in another place. He passed lightly over Charles Townshend's impertinence as the folly of a young man averse, in the warmth of his constitution, to any limitations, which might interfere with his pursuits or passions; excused the opposition of the Speaker, a good, well-meaning man, who had been abused\* by words, and directed the whole force of his displeasure upon Fox, whom—reading passages carefully prepared from a paper, which he held in his hand, he denounced in vehement and indignant terms as "a bad, black man<sup>1</sup>," "a dark and insidious genius, an engine of personality and faction," whose factious designs had been exposed and defeated. He condemned the reproach cast upon the Courts of Justice, and declared that such attacks upon the Chancellor and the Law were attacks upon the King; for the King spoke through the Seals, and was represented by the Chancellor and Judges in the Courts. Indeed, this open contempt of the Law was but one step short of a design to overthrow the Constitution by abolishing the Law, which would in fact deserve it, if it were, as it had been described, a heap of inconsistency, confusion, perplexity and absurdity. Government could only be maintained by Law or by Force, and he, who attacked the Law, favoured government by arbitrary force and disclosed his real principles<sup>2</sup>. But the incendiary had already met with a just and dignified rebuke (alluding to his son's defence of the Bill and its author in the House of Commons), and such conduct was not the way to popularity or favour<sup>3</sup> which, he would venture to say, that person had already discovered. With regard to his own share in the torrent of abuse, he was obliged to those who had so honourably defended him. He concluded with a contemptuous allusion to Fox's subsequent apology: "I despise the invective and I despise the retraction; I despise the scurrility (for scurrility I must call it), and I reject the adulation."

<sup>1</sup> It is remarkable that the expression *black* was applied to Fox independently by the King, by Pitt and by the Chancellor. Below, pp. 72 n., 304.

<sup>2</sup> According to Walpole, the Duke of Cumberland took this as aimed at himself (*George II*, i. 350-1).

<sup>3</sup> Fox had successfully played up to the King's partiality for the Duke of Cumberland, of which a special instance was his opposition to the Regency Bill. Coxe's *Pelham*, ii. 176; Walpole's *George II*, i. 157; *Letters*, iii. 52.

The Bill then passed and the Chancellor on the following day prorogued the Parliament<sup>1</sup>.

"Mr. Fox was not present," continues Birch, "but had soon an account of what passed; for the same evening, being at Vauxhall with some ladies, he broke from them, and collecting a little circle of young members of parliament and others, told them with great eagerness that he wished the session had continued a fortnight longer, for then he would have made ample returns to the Lord Chancellor's speech<sup>2</sup>." The Speaker Onslow, who had been very active in opposition, who had addressed the King on the injustice of the Bill, and had been reprov'd by the Chancellor in the House of Lords, "talked of my Lord Chancellor's speech in the style of Mr Fox, as deserving the notice of the Commons, if they had not been prorogued<sup>3</sup>." "What offends still more" [than the Chancellor's "most outrageous invective on Fox that ever was heard"], writes Walpole, "was the Chancellor describing the chief persons, who had opposed his Bill in the Commons, and giving reason why he *excused* them. As the Speaker was in the number of the *excused*, the two maces are ready to come to blows<sup>4</sup>." These threats, however, came to nothing; while a Bill brought forward by the Duke of Bedford on March 4, 1754, to postpone the enforcement of the act, "till it should be maturely considered and amended," was opposed by the Chancellor, according to Walpole, "dictatorially," and rejected<sup>5</sup>. Fox, who had enjoyed a brief popularity, and whose coach had been dragged along the streets by the populace for several days together<sup>6</sup>, soon saw this artificial agitation subside. "The marriage bill," laments Horace Walpole, "that bane of society, that golden grate that separates the nobility from the plebeians, had not excited a complaint from the latter<sup>7</sup>." Fox had already begun to regret his audacity, which was now to end in "very mean submissions<sup>8</sup>." "Mr Fox," states even Horace Walpole, "seemed wantonly and

<sup>1</sup> Walpole's *George II*, i. 336 sqq.; R. Cooksey's *Essays*, 103; Birch to P. Y. June 9, 1753, printed in *Parl. Hist.* xv. 84; and below, pp. 120 sqq.

<sup>2</sup> Cf. *Hist. MSS. Comm.*, Earl of Carlisle, 206, Robert Ord to C. June 16, 1753. "The patron of it [the Bill] in your Lordship's House, when it came back there, expressed so thorough a contempt for his chief opponent in the House of Commons, that some of his words, being reported to him that night at Vauxhall, produced both motions and expressions much stronger than any we had in the House of Commons."

<sup>3</sup> Birch, as above.

<sup>4</sup> *Letters*, iii. 163; and below, p. 124.

<sup>5</sup> *George II*, i. 369.

<sup>6</sup> J. Wilkinson's *Memoirs* (1791), i. 66. The author, the comedian, was the son of J. Wilkinson, minister of the Savoy, convicted for celebrating clandestine marriages after the Act, and transported.

<sup>7</sup> *George II*, i. 358.

<sup>8</sup> Chesterfield's *Letters* (Bradshaw), 1066.

unnecessarily to have insulted the Chancellor, and had even manifested some fear at having done so. Indeed, he who had always been rash and resolute, now first discovered some symptoms of irresolution; and the time advanced but too fast when the provocation offered to [Charles] Yorke, and the suspicion of his want of a determined spirit, were of essential detriment to him. He could not but feel the Chancellor's haughty scorn of the atonement he had offered; yet, though he let slip both sentences of resentment and indications of an ambition that began to aspire higher, he soon yielded to a silent pacification." Even Lord Waldegrave, his personal friend and supporter, reckons his "wanton offending of the Chancellor" "a capital mistake<sup>1</sup>." His conduct, though applauded by the Duke of Cumberland, met with almost universal condemnation<sup>2</sup>, and incurred the King's displeasure. "Mr. Fox," writes John Yorke, the Chancellor's fourth son, to his brother Philip, on June 19, 1753, "has complained to his Majesty of the treatment he has met with, but received a strong rebuke. This gave Papa a very proper occasion to explain what had passed, in his audience of today, though he said, at the same time, that he did not mean to make any complaints at present. He was told he had never done righter in his life; 'it was necessary for your own honour and *mine*.' My Lord said, he had made it the rule of his life, which he had inviolably kept, never to begin anything personal in public or private, but always to return it. 'That is my rule,' said [the King], 'never to begin, but I love reprisals.' He never was more gracious, spoke much of his obligations to my Lord, and of the personal esteem he had always had for him." On June 23, John Yorke writes again: "Vulpes gives out that his master is not

<sup>1</sup> Waldegrave's *Memoirs*, 24.

<sup>2</sup> pp. 122-4, 131; according to Lord Shelburne, Fox gained "great reputation and some degree of popularity by the spirit and wit with which he opposed and attacked Lord Hardwicke." But the value to be attached to Shelburne's statements, regarding the events and persons of this period, may be gauged by his account, for instance, of Lord Hardwicke's political support of the Duke of Newcastle, which he appears to believe to have first begun at the death of Henry Pelham in 1754. (*Life*, by Lord Fitzmaurice, i. 55, 56, 79.) Cf. also his account of Lord Granville's "secret of cowing Lord Hardwicke" (86), one method being the following: "In one of the short-lived administrations at the commencement of the war, Lord Granville, who had generally dined, turned round to say, 'I am thinking that all over Europe they are waiting our determination and canvassing our characters. The Duke of Newcastle, they'll say, is a man of great fortune, who has spent a great deal of it in support of the present family; Fox, they'll say, is an impudent fellow who has fought his way here through the House of Commons; as for me, they know me throughout Europe, they know my talents and my character. But I am thinking they will all be asking *Qui est ce...de Chancelier?* How came he there?'" Lord Shelburne married Lord G.'s eldest daughter.

offended with him, but those who can discern the face of the sky say that his barometer is at settled dark and gloomy. Neither he, nor Lord Granville, were spoke to by the King upon the Accession Day, while my Lord was twice very graciously noticed<sup>1</sup>."

An attack of this kind of one minister upon another, even at a time when the ties of ministerial cooperation were much looser than at present, was a strange incident. Fox had himself made a clandestine marriage, his union with the daughter of the Duke of Richmond having been effected in this manner<sup>2</sup>, a fact which has generally been taken as the explanation of his behaviour. The real cause, however, was a very different one. The extravagant hostility shown against the Bill was without any doubt an incident in the series of intrigues, organised against the administration by the Bedford and Cumberland faction, with the object, as in the case of the Jew Bill, of playing upon popular prejudices and passions, and of raising an irresistible clamour against the government,—intrigues, which were, in this instance, directed especially against the Chancellor, as the chief author of the Regency Bill, and the strongest support of the ministry which it was hoped to subvert<sup>3</sup>. It was rumoured that Fox would be dismissed, but no open quarrel or disruption of the administration was allowed by the Chancellor to result from the incident. He had long taken Fox's measure, the meanest, the most depraved, the falsest, the most unscrupulous and mischievous of all the public men of that time; but while despising his character, he recognised his ability and activity, his strength derived from the favour of the royal family, and the value of his support in the House of Commons, and had resolved for the present, on public grounds, to work with him in the administration<sup>4</sup>.

<sup>1</sup> H. 26, ff. 88, 90 and p. 131. According to H. W.'s account, doubtless Fox's own version: "The King was civil to Fox at his next levee: afterwards, in his Closet, Mr Fox beginning to say, 'Sir, last Wednesday the Chancellor'—the King interrupted with 'Oh! Sir, I believe you had given him cause; it is now pretty even.'" Fox repudiated all factious intrigues in his behaviour, and the interview ended with Fox obtaining a place for one of his dependents. *George II*, i. 352.

<sup>2</sup> "Lady Car: Lennox has, in her great wisdom, and in her excellent parts, clapped up, without the knowledge, and against the approbation of her parents, a clandestine marriage with that accomplished person, Hen: Fox Esq<sup>re</sup>." P. Y. to J. Y., May 10, 1744 (H. 15, f. 48).

<sup>3</sup> The hostility to the Marriage Bill continued for some time to be a kind of hereditary mania in the Fox family. Charles Fox, son of Henry Fox, was accustomed to abuse it in the House of Commons, and his grandson, Lord Holland, to express great disapproval of it. Campbell's *Lives of the Chancellors* (1846), v. 127 n.; Wraxall's *Hist. Mem.* (1884), ii. 126.

<sup>4</sup> See chap. xxx. H. to N., Sep. 27, 1761; cf. Pitt's character of Fox as related by

The Bill itself, which came into operation on March 25, 1754, and remained unaltered for nearly 70 years, notwithstanding frequent attempts, notably in 1764-5, 1772 and 1781, to abrogate its provisions<sup>1</sup>, was undoubtedly one of the most beneficial measures ever passed into law. It suppressed the infamous matrimonial trade with its grave scandals and abuses, abolished verbal marriage contracts, enforced publicity, and secured for the first time certainty in the marriage tie, the foundation of the family and of the national existence. Yet it retained some defects, which were, however, for the most part, rather pointed out by later critics than perceived, or felt, by contemporaries. Owing to an ill-judged amendment in the Commons<sup>2</sup>, its application was restricted to England; and runaway couples could still be married at Gretna Green, or elsewhere, across the Scottish border, in the Channel Islands, or abroad. It had been originally intended to immediately extend the Act to Scotland. An order was passed by the Peers, on April 17, 1753, for the Lords of the Court of Session to prepare a Bill for this purpose, and correspondence passed between the Chancellor and the Scottish judges concerning the provisions of the measure. But in February 1754, on account of the violent opposition raised against the English Act and to avoid further occasion of cavil, Lord Hardwicke advised its postponement. It was therefore abandoned<sup>3</sup>, and the abuses, restricted, however, by various judicial decisions, exist in Scotland to this day<sup>4</sup>. Some injustice to innocent persons, offending through ignorance, resulted from the clause, which rendered null a marriage between minors without the consent of the parent or guardian, and from the provisions relating to the use of false names in the banns and concerning celebrations in improper churches or chapels, which was remedied by the Acts 3 George IV, c. 75 and 4 George IV, c. 76<sup>5</sup>.

The inferior status in which the obligation of celebrating all marriages according to the Anglican rite placed those communions,

Shelburne (*Life*, i. 78)—“he thought him the *blackest* man that ever lived...a great dealer in anonymous letters...also in newspaper abuse...that he educated his children without the least regard to morality...” Shelburne, however, had quarrelled with Fox. Lord Waldegrave’s account is much more favourable (*Mem.* 24) but still unconvincing. It is only fair to add Fox’s opinion of Pitt—“profligate and abandoned in his political life...what Lord Winchelsea four years ago said he was, a very silly fellow” (*Life of Lady Sarah Lennox*, i. 57).

<sup>1</sup> J. S. Burn, *Hist. of the Fleet Marriages* (1834), 21; and see below, vol. iii. chap. xxxii.

<sup>2</sup> Above, p. 67.

<sup>3</sup> H. 100, ff. 59 sqq.

<sup>4</sup> G. E. Howard, *Hist. of Matrimonial Institutions*, i. 473.

<sup>5</sup> *Ib.* 463-4.



which dissented from the national church, was a defect, which in later times would have been felt as an intolerable injustice. The Act, indeed, deprived the Protestant Nonconformists of their right to celebrate marriages in their own chapels, which they had before enjoyed. There appears, however, no reason to think that this was considered at the time a serious grievance. The Protestant dissenters from the Church of England still used the parish church and the parish registers for baptisms, marriages and burials, and the compulsory celebration thereof weddings would not be deemed any hardship. The Roman Catholics were content to go through a formality, which the civil power enjoined, to secure a legal status for their children; while they satisfied their religious instincts in addition by a celebration of the rite according to their own faith<sup>1</sup>. Jews and Quakers were specially exempted from the Act, and allowed to celebrate their marriages in their own places of worship. As time went on and the principle of religious equality extended and became recognised, the inequality inflicted by the law was resented. It called then for redress and it did not call in vain, the civil marriage law of 1836, 6 and 7 William IV, c. 85, removing this grievance. But at the period under consideration this was not the case, and the Bill, probably, was felt as an injustice by few except the too impetuous lovers, and the sharpers and degraded parsons, who had formerly assisted in, and profited by, their escapades. Neither in Wilson's *History of the Dissenting Churches* (1808-14), nor in Bogue and Bennett's *History of Dissenters* (1833), is the Marriage Act even mentioned; though the authors of the latter work devote a considerable portion of their labours to the discussion of the various acts of injustice and severity, for which the English government was at different times responsible. On the contrary, they extol the kindly liberality of the times and the reign of George II, as the golden age of the Nonconformists. And if more positive proof is wanted, we have it in the fact that the Protestant Nonconformists continued, even subsequently to the Act of 1836, to celebrate their marriages in the parish churches. It is not till recent years that the liberty of marrying in their own chapels has been to any extent exercised<sup>2</sup>.

While the law has been amended to meet the requirements of later political and social conditions, and particular defects have

<sup>1</sup> *Life of Bishop Challoner*, by E. H. Burton, i. 325-45.

<sup>2</sup> J. T. Hammick, *Marriage Law of England* (1887), 17.

been remedied, for which the violent opposition in the House of Commons was in great part responsible, the fundamental principles and provisions of this great statute have remained unchanged, and from it have proceeded all subsequent developments of the marriage law in England<sup>1</sup>.

A very special importance attaches to the Act, owing to the suppression of the jurisdiction of the Church over marriage, which it entailed. Hitherto the marriage law had remained within the jurisdiction of the ecclesiastical courts in a state of chaos and confusion; and no portion of the great history of the church is less satisfactory or less edifying than its treatment of this all-important matter. According to the canon law, the validity of a marriage depended on the religious ceremony performed by the priest at any time or in any place, or even upon the mere consent of the parties, without ceremony, followed or not followed by cohabitation. The leading case was the lawsuit of Richard de Anesty, the result of a divorce pronounced in 1143, when "a marriage solemnly celebrated in church, a marriage of which a child had been born, was set aside as null, in favour of an earlier marriage constituted by a mere exchange of consenting words.... A strong case is put. On the one hand stands the bare consent *per verba de praesenti*, unhallowed and unconsummated, on the other a solemn and a consummated union. The latter must yield to the former<sup>2</sup>." Some abuses were abolished at the Reformation but others, and especially that of clandestine marriages, though declared an offence by the lay courts and by statute<sup>3</sup>, had continued under the ecclesiastical jurisdiction. The canons of 1604, prohibiting marriages without banns or license and without the consent of parents in the case of minors, were habitually violated by the clergy. As Lord Hardwicke himself had pointed out from the Bench, "one would think nobody ever read them, neither the officers of the spiritual courts nor clergymen, or they could not act so diametrically opposite to them<sup>4</sup>." Marriages in violation of the canons still continued to be performed, and were still valid, though the parties were liable to

<sup>1</sup> For the act and the state of the marriage law previous to it, see *History of Matrimonial Institutions*, by G. E. Howard (1904), vol. i. pt. ii. chaps. vii.-ix. and list of authorities there collected; W. E. H. Lecky, *Hist. of England* (1883), i. 490; *Democracy and Liberty* (1896), ii. 140; J. H. Hammick, *The Marriage Law* (1887); Geary, *Marriage and Family Relations*, 9-15; Burn and Phillimore, *Ecclesiastical Law* (1842), ii. 433 a; J. S. Burn, *Fleet Marriages*, 32, 146.

<sup>2</sup> Pollock and Maitland, *Hist. of English Law* (1895), ii. 365, 369.

<sup>3</sup> See Lord Hardwicke's judgment in *Middleton v. Croft*, vol. i. 123.

<sup>4</sup> *More v. More*, 2 Atkyns 158; and *Barnardiston, Eq. Cases*, 410.

ecclesiastical censure. Moreover, these unions, though valid to the extent of voiding a subsequent marriage with another person, were not necessarily legal; for the temporal courts had endeavoured to check irregular marriages by making the acquisition of certain property contingent upon the publicity of the ceremony<sup>1</sup>. "Anarchy was practically sanctioned by the Canon Law. Where the utmost clearness and simplicity were needed, obscurity and perplexity prevailed; and where publicity was urgently required by the plainest rule of common sense, there secrecy was in effect invited and rewarded<sup>2</sup>."

The effect of the new law was to supersede entirely the canon law as far as marriage was concerned, since it declared the religious ceremony, unless accompanied by the prescribed legal formalities, absolutely null and void, and forbid the ecclesiastical courts from enforcing verbal contracts. Such a change was in fact a revolution; for though the ecclesiastical courts by previous legislation, such as that embodied in the Regency Bill of 1751, which annulled a marriage entered into by the heir to the throne, being a minor, without the consent of the Regent, or that in Ireland dealing with certain marriages between Protestants and Roman Catholics, or again by the frequent dissolution of marriages by act of Parliament, had suffered some attacks upon their powers, yet these measures had only a very limited application. By the Marriage Act of 1753 the state removed marriage entirely out of the jurisdiction of the Church and placed it within its own, though while it did so, it was careful to recognise and retain not only the religious, but the Anglican, sanction. It was no doubt owing to this fact that the measure, beyond the cavillings of a few Jacobite preachers at Oxford, did not arouse ecclesiastical opposition or hostility, and that it received the support of the whole bench of bishops<sup>3</sup>. It forms the basis of the entire marriage law as we now have it, and the purely secular marriage, provided in 1836, and the law of divorce of 1857, are merely corollaries and necessary consequences, when once marriage became a secular contract. The change was inevitable in the new order of society which was then developing;

<sup>1</sup> G. E. Howard, *Hist. of Matrimonial Institutions*, i. 355.

<sup>2</sup> *Ib.* 324.

<sup>3</sup> Walpole's *George II*, i. 147 and 342, who attributes the episcopal attitude to the decline of ecclesiastical controversy and is followed by Lecky, i. 497; a section of the Anglican Church at the present day appears, from the attitude adopted on the occasion of the recent alteration of the marriage law by Parliament, to claim for the Church a jurisdiction over marriage separate from, and concurrent with, that of the state, a pretension, which the church of the 18th century, on the occasion of the Marriage Act, never put forward, and which there is now neither machinery nor authority to enforce.

and though the weakening of the religious sanction of marriage is regrettable, yet as the sanctity of marriage must ever be of the highest importance politically as well as morally, being indeed the foundation of society itself, so it is not unreasonable to suppose that the security of the marriage contract will never be a matter of indifference to the state; and experience has shown that the secular power, at least in Great Britain, is a more jealous and a more competent guardian of its inviolability than the ecclesiastical power has ever been.

In concluding this brief review of the legislation carried through Parliament by the Pelham ministry—incomplete, because during those years, owing to the recent order, parliamentary debates ceased to be published in the Magazines—it is worthy of notice that each of these reforms was effected in opposition to popular opinion, and at the risk of losing popular support. The Jews Bill had raised a formidable hostility, and the cry of ‘No Circumcision’ took the place for the moment at election meetings of ‘No Popery.’ The Mutiny Bill continued, and made permanent, the establishment of “a standing army in the time of peace,” a phrase, ever since the Commonwealth, synonymous amongst the people with despotic and arbitrary government<sup>1</sup>. The reform of the calendar long left a vague sense of injury, and government candidates were assailed at the hustings with shouts of “Give us back our 11 days.” The lowering of the interest on the national debt was said to betray those, who had cheerfully come to the assistance of the government at a time of national peril, and to rob widows and orphans<sup>2</sup>, and the project formerly, on account of its unpopularity in the City, had been dropped by Sir Robert Walpole<sup>3</sup>. The whole of the vast legislation affecting the Northern kingdom, though it met with little organised opposition in Parliament, received little support from Scotland, and was a bold act, breaking up as it did, a whole civilization, and demolishing the privileges of many powerful individuals. The Marriage Bill was a drastic reform of the most far-reaching character, carried against factious opposition and popular prejudice, in spite of the approaching general election<sup>4</sup>, by the Chancellor’s influence and authority. During the discussion on the Jews Bill it was asked,

<sup>1</sup> *Parl. Hist.* xiv. 462 n.

<sup>2</sup> “It was sorely against the inclination of the great proprietors in the Stocks, and I suspect by throwing out a bait for some of the most interested.” The 2nd Lord Hardwicke in *Walpoliana*, Supplement 20.

<sup>3</sup> *Hist. MSS. Comm.*, Earl of Carlisle, 183.

<sup>4</sup> Chesterfield’s *Letters* (Bradshaw), 1066, who deplores the imprudence.

"What terrible crime the people of this kingdom have committed ...because we have of late had some sort of bill offered every year to Parliament for depriving them of their birthright." Yet the government held firmly on its way, bowing only to the storm in the case of the Naturalisation Bills, the least important by far of the several measures, and showing a very different disposition to the easy acquiescence in domestic abuses which had characterized the rule of Sir Robert Walpole. There could scarcely be offered a better example of true legislative reform than the Bills prepared and carried through Parliament by the Chancellor during these years, or a wiser precedent established of when to persist, and when to yield, than his attitude towards the Marriage Act and the Jews Bill; in the first case, where a serious social abuse called for immediate remedy, firmly confronting, with his whole strength and authority, and overruling, factious opposition and hostility, and in the other, where no great interests were involved, refraining from forcing an unpalatable and misunderstood measure upon the country and showing himself indulgent to popular prejudices. Such examples and such precedents might indeed be studied and followed with advantage by more modern statesmen, who would then learn that, while it is sometimes unwise and dangerous to legislate too far in advance of popular opinion, yet that the office and duties of a government are not entirely limited to carrying out the popular mandate, and that the rulers of a great state must not content themselves with always following at the tail of the mob, but must stand forth on occasion to lead the nation.

The Chancellor had been the person most aimed at during these contests in domestic affairs, and he had emerged a greater figure even than before. As a personal mark of favour and approbation from the King at this time, and as a public sign of the King's confidence in the ministry in the midst of so much hostility, some part of which had originated in the royal family itself, an earldom was at the beginning of 1754 offered to Lord Hardwicke. "The King's offer to the Lord Chancellor," writes Henry Pelham to his brother on January 8, 1754, "is a great proof of his present disposition; and I hope, for all our sakes, the Lord Chancellor will not demur in accepting it. I know few things that would give greater *éclat* at present than this promotion. I hope we shall not lose the benefit of it<sup>1</sup>." The rise in the peerage, which seems to have been before refused<sup>2</sup>, was now accepted, and the Chancellor

<sup>1</sup> Coxe's *Pelham*, ii. 496.

<sup>2</sup> Acc. to Walpole it was talked of in 1746, *Letters*, ii. 205.

took his seat in the House of Lords, with the prescribed ceremonies, on April 4, 1754.

After the Earl of Holderness had signified to the House the King's grant of the new titles of Earl of Hardwicke and Viscount Royston, "his Lordship, taking in his hand the Purse with the Great Seal, retired to the lower end of the House; and having there put on his robes, was introduced between the Earl of Lincoln and the Earl of Breadalbane (also in their robes); the Gentleman Usher of the Black Rod, Garter King at Arms in his Coat of Arms carrying his Lordship's Patent (which he delivered to him at the Steps before the Throne); the Deputy Earl Marshal and the Lord Great Chamberlain of England preceding. His Lordship (after three obeisances) laid down his Letters Patent upon the Chair of State, kneeling; and from thence took and delivered them to the Clerk; who read the same at the Table.

The said Letters Patent bear date the 2nd day of April [1754]...

His Lordship's writ of Summons was also read....Then his Lordship came to the Table; and took the Oaths and made and subscribed the Declaration, and also took and subscribed the Oath of Abjuration, pursuant to the statutes; and was afterwards placed at the lower end of the Earls Bench, and from thence went to the Upper End of the same Bench, and sat there as Lord Chancellor; and then his Lordship returned to the Woolsack<sup>1</sup>."

This public recognition of the legislative measures and conduct of the government had not been formally completed when, on March 6, 1754, the sudden and unexpected death of Henry Pelham took place, at the age of 60. In the course of this narrative, and still more convincingly in the correspondence, the good and the bad points in his administration, both at home and abroad, together with the merits and defects of his private qualities, have clearly appeared. But whatever might be the difference of opinion upon these, his absolute integrity and honesty of purpose were universally acknowledged by his contemporaries<sup>2</sup>, and had won general respect. "The administration lost in him its essence and stability," writes the second Lord Hardwicke. "I never remember a Minister so generally lamented. Those, who had been in opposition to him, did justice to his memory, so universal was the opinion

<sup>1</sup> *Lords Journals*, xxviii. 262.

<sup>2</sup> *Parl. Hist.* xv. 287 and below, p. 187; always of course excepting Horace Walpole, who though he abuses him in his usual fashion does not scruple to ask favours of him (*George II*, i. 369; *Letters*, iii. 132). And see his letter in execrable taste on the dead minister, iii. 212.

of his integrity, economy and rectitude of intention<sup>1</sup>." The loss of a man of such sterling character and patriotism was a serious one at that moment, and one greatly felt by the Chancellor who, besides his esteem for the departed statesman, had regarded his continuance at the head of affairs, in conjunction with the Duke of Newcastle, as the only possible scheme of administration, and as the sole security for the interests of the nation.

## CORRESPONDENCE

*Hon. Charles Yorke to Col. the Hon. Joseph Yorke, with the army in the Netherlands*

[H. 37, f. 71.]

WREST, Thursday, August 6, 1747.

...The King's Speech at the close of the Session gave a very general satisfaction, and was a good prelude to the dissolution. His Majesty was so much pleased with it himself, that he told the speech maker [the Chancellor] he thought it had made a great impression upon the people, and that the right and happy temper, in which the nation seemed to be, was very much owing to it<sup>2</sup>. The compliment was great, but the effect imputed to it proceeded from deeper and more weighty causes, the breaking of two oppositions in the House of Commons to pieces, the terrors of the Rebellion, the wise and steady conduct of the Government in its measures of prevention for the future, the dread of France. All this has crumbled away the strength of the Jacobite and Tory faction for the present and united us; but when the difficulties are over, the sense of them will vanish too, and we shall divide again....

[H. 250, f. 283.]

[On October 17, 1747, Thomas Herring, the Archbishop of York, and the Chancellor's great friend, having been offered the archbishopric of Canterbury, forwarded to Lord Hardwicke an extremely decided refusal based on various grounds, his unequal abilities, the expense, his complete happiness and satisfaction in the place where he now was.] I have considered the thing, my best friend and my most honoured Lord, with all the coolness and deliberation and compass of thought that I am master of, and am come to a very firm, and most resolved determination, not to quit the see of York, on any account, or on any consideration.

<sup>1</sup> *Walpoliana*, Supplement 19; H. 75, f. 165; Lord Chesterfield, *Letters* (Bradshaw), 1089.

<sup>2</sup> Printed in *Parl. Hist.* xiv. 63. See above, vol. i. 626.

*Lord Chancellor to the Archbishop of York*

[H. 250, f. 287.]

POWIS HOUSE, Oct. 20, 1747.

MY DEAR LORD,

I never received a letter from your Grace, which gave any real concern till yesterday, and in truth the anxiety that has created in me is not easy to be described.

I must begin with acquainting your Grace with what has passed since my last. On Wednesday the 14th [came] the King's messenger with an answer from the Bishop of Salisbury<sup>1</sup>, absolutely declining the archbishopric in very decent but positive terms; alleging such reasons from his age of full 70 years, very bad health and infirmities, as are unanswerable; but declaring that otherwise he should have thought himself bound in duty to accept it. To this refusal his Lordship has adhered in another letter by yesterday's post. On Sunday noon, before this last letter, the King acquainted me with his resolution that you should go to Lambeth, for which I thanked him as became me, not in the least suspecting (as I am sure I had no reason for it) that you would decline it, and yesterday noon his Majesty declared his pleasure in form to the Duke of Newcastle to the same effect. In this state the affair stood at the time I received your two last letters, which your Grace will have the goodness to forgive me in saying, did to the last degree surprise and grieve me. As the King's positive orders were already given to the proper officer, there was no opportunity for interposing to prevent them, and therefore I thought it most advisable not to communicate, or so much as mention, your letter to any person whatsoever, lest that might make an ill impression, and lay your Grace under new difficulties. So far I did go as to hesitate and throw out doubts to the Duke of Newcastle and Mr Pelham, whether you would be inclined to accept. Upon which they both stood astonished at me; said it was impossible that a bishop in the vigour of his age, not quite 55, of such a character, so much obliged to the King and so well esteemed and beloved in the world, should decline it. They went further, and very sincerely declared their opinions that it would have the worst appearance and create the worst impression, make people doubt of the stability of [his] Majesty's government, minister a new triumph to the Jacobites, as if nobody of merit would venture to accept the highest and most

<sup>1</sup> Thomas Sherlock, became bishop of London the following year.



important dignity in the Church. These were their sentiments, and I confess they are my own.

Pardon me, my dear Lord, if I say I am sorry at my heart that you entered into this consideration with so early and fixed an intention to form a resolution. You were alone, at a great distance from your friends; and though I know some of them, who may be much less able to advise you than your own thoughts, yet in affairs of this nature, which concern the world and things exterior to ourselves, the sentiments of others may add to one's own stock and have their weight. *Pace tuâ* then, permit me a little to examine your reasons.

The disabling argument, drawn from your unfitness to fill this high station, could proceed from nobody but yourself. Everybody else sees and allows the contrary; and, believe me, whoever is fit to be archbishop of York and has filled it with reputation, is fit to be archbishop of Canterbury. Therefore, it is my sincere opinion (and if it were not really so, I am too much your friend to say it), that this must be totally laid aside.

Your Grace supposes some extraordinary difficulties in executing the duty of this station. Be assured there are none, unless in very difficult times, which, in respect of that see, do not now exist. If there should be any, you have so many friends, and are so well beloved and esteemed, that you would want no advice, assistance or support. I choose not to speak of myself; but all my friends, who I am sure are yours, will be ready to contribute to it. I spent near two hours with the Bishop of London<sup>1</sup> on Saturday night. You know he has a great deal of prudence and judgment. He is entirely of this opinion; declares most explicitly<sup>2</sup>, wishes you at Lambeth, and that he will be ready to furnish you with all his lights and assistance in those matters. He appeared to say this not affectedly, but in such frank expressions, that I firmly believe him.

The principal objection seems to be that of the expense of coming into this see. But indeed, my dear Lord, you ought not to lay any weight upon that. Your Grace has no family; you know the first fruits are paid by instalments, and the usage of modern times has been for a new archbishop not to go to Lambeth to reside under a year, or a year and a half, and sometimes to the extent of two years. In that time you may, without living improperly, lay up out of your revenue of that see (which I take

<sup>1</sup> Edmund Gibson.

<sup>2</sup> Words illegible.

very near £6000 per annum declared), more than sufficient to defray the whole expense of coming in, including furniture. This is what has been always expected. Your Grace objects that within that time you may die. Our breath is in the hands of Providence, and if we should decline great or useful things on that account, we should live all our life-time subject to budge<sup>1</sup>.

This seems to be the sum of your Grace's objections. I will now plainly, and without compliment or ornament, tell you my reasons why I am most sincerely of opinion that you ought to accept. 1. I see clearly the King, to whom you and I are so much obliged, expects it of you. Notwithstanding what has passed, 'tis his wish to have a good Whig there, and if you refuse, no persuasion or art can prevail with him not to be offended. I may say to your Grace, but it must not be told to any other, that his Majesty said, *surely you would not take it ill, that it was offered to two others before you*. It was what he could not in decency avoid. If you should now refuse it, he will <sup>2</sup> believe it proceeds from pique, and it will be impossible to get the better of that court way of judging.

2. His Majesty's domestic government will suffer by your refusal, both in reality and in the opinion of the world; and your Grace will admit that opinion goes a great way in Government. It will minister a great handle of triumph <sup>2</sup> to the enemies of the King and his present administration, and I know they will think so.

3. It has been the universal wish and expectation of the Whig party that this great preferment should fall into your Grace's hands. If you refuse, it will be a grievous blow to the cause, particularly to such of the Whig clergy as deserve encouragement.

4. If you accept it now, it will be attended with no envy that can bear a colour; the only two persons who, by their studies, though not [P] character, had probable pretensions before you, having declined. This is a new circumstance, not known to you when you writ your letter.

5. As to the objection of difficulties in the business and duties of this station, there will be none. The Bishop of London, who judges well, said to me, *there never was a more favourable time for accepting an archbishopric*. A strong Whig Parliament is just chosen, which may sit 7 years. All contests about ecclesiastical powers, particularly that of convocation, which created the greatest

<sup>1</sup> *I.e.* to flinch, shirk.

<sup>2</sup> Words illegible.

trouble to Tenison and Wake, are subsided and quiet, nor likely to rise again in our days.

6. Instead of contracting new difficulties, you will be delivered from some old ones. Canterbury is free from those provincial or county disputes, to which your present situation is subject. Your Grace will be delivered from being implicated in the disagreeable *embarras* of elections, and from the invidious suggestions of people who fancy themselves not sufficiently supported. The circumstances of *York* bring more trouble of this kind upon an archbishop than any other see in England.

7. Your Grace will above all things consider that this station will put into your hands an opportunity of doing great [?] services to Religion, your King and your Country. No wise and good man should decline this. Besides, it will give you great opportunities of serving your friends, who have merit. *York* has but a poor patronage, Canterbury, including the options<sup>1</sup>, a great one.

8. I come now to the personal consideration. You cordially wish well to your old friend Hutton<sup>2</sup>; so do I. Everybody allows that it is quite impossible to carry him [to] Canterbury at once, but *York* may be practicable; and between you and I, that is one aim of the Ministry, and they sincerely desire to do both together. If your Grace refuses, you disappoint the whole and defeat your friend. This consideration is also new to your Grace, but [it] is more than personal. It will greatly add to the mortification of the Whig party, which will all be laid at your Grace's door. If you two shall fill the two archiepiscopal sees, it will be reckoned giving the greatest stability to the true protestant cause, that it ever received almost in any time.

I had more reasons, but have gone through as many of them as I can recollect. For God's sake, for the sake of the King, your country and your friends, don't decline. Consider the weight of this reasoning, and suffer yourself to be persuaded to yield to it. You are called by the voice of the King and of the best-intentioned men, and in this limited sense, *Vox populi est vox Dei*.... Let your answer to my Lord Duke be accepting; I know it will be most dutiful to his Majesty and not flattering, and make it as concise as you can....

<sup>1</sup> The right of the archbishop of choosing and presenting to one living in the see of every bishop whom he consecrated, abolished 1845.

<sup>2</sup> Matthew Hutton (1693-1758), rector of Spofforth and Bishop of Bangor, where he succeeded Archbishop Herring in 1743. He followed the latter now to *York*, and in 1757 also to Canterbury.

[This accumulation of arguments proved irresistible, and on October 24 (f. 293), the Archbishop, after much agitation of mind, writes to the Chancellor that he has just thrown into the fire three letters of refusal and has accepted.]

On April 7, 1749 (H. 250, f. 412), he writes:] I assure your Lordship...that my repose and support is in your Lordship's friendship, and that in all public points I am resolved to be governed by your Lordship's judgment; for there I am sure of finding, what I can find nowhere else, integrity and wisdom.

*Lord Chancellor to Col. the Hon. Joseph Yorke, Secretary to the Embassy at Paris*

[H. 7, f. 38.]

TWICKENHAM PARK<sup>1</sup>, April 2nd, 1749.

DEAR JOE,

I set down to write this without knowing when I may find a safe hand to convey it, but I think it is right you should not be ignorant of the state of the Court at the turn things have taken since you left us. This tempts me to make use of part of the short leisure this place affords me, and to take my chance for sending it.

The relations you had received from the Duke of N. and myself, as well as your own observation, had put you *au fait* of the state in which you left us. Since your departure, the great contests in Parliament have been upon the *Mutiny Bill*, and the *Bill for making New Articles of War and Regulations for the Navy*. In the course of those two Bills, and from the various accidents attending them, the dispositions of different parts of the Court and the new connexions, or rather the progress of connexions begun before, have shewn themselves.

As to the *Mutiny Bill*, you know whose power that chiefly concerned<sup>2</sup>, which made it a particular object of opposition from Leicester House; for this reason the two points most laboured were the subjecting the half-pay officers to the Articles of War

<sup>1</sup> The residence of the Countess of Mountrath, formerly Lady Diana Newport, daughter of the second Earl of Bradford, who, as the sister of Lady Elizabeth Cocks, wife of James Cocks, Lady Hardwicke's brother, was thus related to and often visited by the Chancellor. Cf. Horace Walpole's nonsense (*Letters*, 1903, iii. 98): "By the way, you know that reverend head of the law is frequently shut up here with my Lady Monrath, who is as rich and tipsy as Cacofofo in the comedy." (Beaumont and Fletcher's *Rule a Wife and have a Wife*.)

<sup>2</sup> The Duke of Cumberland as Captain-General.

and military discipline, and the power of the King or Captain-General to cause the proceedings of the Courts martial to be revised after sentence given.

As to the other Bill about the navy, the like clause about their half-pay officers being inserted, rais'd a loud clamour amongst a great number of the Admirals and Captains of the Fleet, which created a violent opposition against the Lords of the Admiralty, and was in great measure levelled at Lord Anson whose uncommon good fortune and high elevation must naturally have produced envy.

You clearly see that the subject matter of these two Bills gave them a kind of natural relation the one to the other, which was increased, and brought something nearer, by their going on in the House at the same time, and was still aggravated by an accident. The accident was this :—When it was perceived how unpopular the clause about the sea officers in half-pay was become, some of the Admiralty (amongst whom Lord Anson was one) were for giving up that point, as being [?] no sort of necessity in their service. Lord S[andwich] upon this went immediately (over from the meeting) to the Duke<sup>1</sup>, and represented that the giving up of the sea-point would destroy, or at least weaken, the land-point, and at his return openly declared H.R.H.'s opinion that it must not be departed from. Against this nothing was to be said, and the consequence has been that it has pointed the unpopularity in both services against H.R.H.

From this time, the dispositions and merits of persons towards that quarter were judged of according to the zeal or coolness they shew'd in the several debates, which arose upon those Bills; and of this our friend Mr P[elham], who I believe has had real misgivings upon some things, and has not cared unnecessarily to draw the odium of some others upon himself, has felt a share.

Lord S[andwich] has pushed on the D[uke] of B[edford], having, in conjunction with the Duchess, gained the absolute ascendant over his Grace. Therefore such persons in the House of Commons as they could influence, have taken strong parts, and of the old Walpolian corps, Mr Fox has appeared the most zealous. This may have made others not dislike to see the majorities upon some of the questions grow thinner.

When the Mutiny Bill came up to the House of Lords, the Opposition appeared remarkably broken and divided. Lord

<sup>1</sup> Lord S. was First Lord of the Admiralty.

Granville and Lord Winchelsea, with such as are particularly attached to them, never attended. Those who did attend, differ'd much amongst themselves, so that in the first division which was upon a question made by Lord Bath to extend the power of life and limb, their numbers were 16 to 88; and on the two last 15 to 73 and 12 to 72. The Duke of Newcastle took a strong and handsome part; the Duke of Bedford and Lord Sandwich a warm one. For myself, I was forced to take a more active part, and rise more often than one in my station would have wished to do upon an army Bill. But I found it necessary from the want of information in others and, by the help of some management, I think it rather produced conviction than disgust in the House. However, I have had the good luck to receive the thanks both of the King and H.R.H. for my service and—I shall make you laugh when I tell you that—the latter says I should make an excellent Adjutant General.

One circumstance was remarkable; that whereas a particular case of a revision of the sentence of a court martial, in Flanders in the Campaign of 1747, having been foreseen to be objected, and which was accordingly objected in the debates, the materials to answer that complaint were put into my Lord Sandwich's hands.

Of the incidents which occurred in this affair, Lord S. has endeavoured to make the best advantage, in order to fix and extend his credit with your Master<sup>1</sup>. To give it the more figure and parade, suppers and balls at the Admiralty and Bedford House have gone round, and Lord S. is of H.R.H.'s party at Windsor Lodge for these holidays. I can't help telling you an absurdity that happened at the last of these balls, that his Grace was pleased to invite Dick Lyttelton<sup>2</sup>, who began the opposition to the Mutiny Bill, to be one of his party to entertain H.R.H.

As this kind of conduct would naturally give jealousy, you will easily imagine how strongly that must operate in a mind so prone to jealousy as a certain friend of ours<sup>3</sup>. But it gives it also to many others. Fox and H. Legge<sup>4</sup> are said to be gone over to this party and the Duke of Bedford I have named already, which is the most material of all. And here I cannot but observe how odd

<sup>1</sup> The Duke of Cumberland.

<sup>2</sup> Colonel Richard Lyttelton, younger brother of George, later first Lord Lyttelton K.B. 1753.

<sup>3</sup> The Duke of Newcastle.

<sup>4</sup> Vol. i. 668 *n.*

a coincidence this is, that Fox and Legge, whose sole quarrel with the Duke of N. is that he (as they are persuaded) opposed either of them being made Secretary of State in favour of Lord Sandwich (whom he was quite in earnest to have made so at that time, and not being able to carry it named Lord S.'s great friend the D. of B.), should unite with the same Lord S. and his great friend, who did succeed, against the D. of N. But so are courts made.

From these symptoms you may be sure the party is alarmed. Serious people, who are only lookers on, lament the Duke [of Cumberland]'s being likely to fall into the hands of an ambitious, interested, warm young man<sup>1</sup>, ready to make his court at any rate, and to push him to any lengths. I hear the Pr. Amelia was likely to have gone wrong, but for some short time past has seen the error and the danger<sup>2</sup>, and is frightened at the precipice she sees her brother drawing near to. For nothing can possibly give so great an advantage to the Prince of Wales as such a conduct, and it is effectually doing the business of the Leicester House party for them. Lady Y[armouth] is affirmed to be in the right system, and I believe is so, and Sandwich has never been once to make his court to her, since his return from Holland. As to the King, I don't find he is yet touched. He naturally hates Lord Sandwich<sup>3</sup>, and the D. of Bedford's manner of doing business is disagreeable to him to such a degree that, tho' he wishes to be civil to so great a subject, yet he can't forbear brusquing him, of which his Grace has of late complained even to me. The turn he seems to be just now taking is from being partial to Prussia, to become a violent anti-Prussian in the Closet. A dangerous card, if played unskillfully; for tho' nothing should be done to aggrandize or encourage Prussia, yet the working up that prejudice too strong may end in consequences very pernicious to this country.

From these circumstances arises a very embarrassed situation of affairs. The great difficulty is how to keep this administration together on any tolerable terms.

1. In the first place, the Duke has so good an understanding and such a sense of his real obligations to the Pelhams (if services performed to a Prince may be called so), that I flatter myself, if the fatal consequences of the measures he is going into are calmly,

<sup>1</sup> Lord Sandwich.

<sup>2</sup> This proved unfortunately not to be the case.

<sup>3</sup> Lord Sandwich had formerly spoken insultingly of Hanover. See p. 171, where Col. Joseph Yorke writes of the King's anger at the Duke's licentious habits and his close friendship and alliance with Lord Sandwich.

considerately and weightily laid before him, he might be brought back.

2. H.R.H. might retreat without absolutely ruining Lord Sandwich, if he would be content with his province of first Lord of the Admiralty, without meddling in other political affairs. This indeed I take to be difficult, but

3. It is still more difficult to separate the D. of Bedford from him, and here the great danger lies; for if the D. of B. is either hurried out or quits with resentment, it will make such a break in the party as will not be easy to be repaired.

This difficulty I foresaw, and gave warning of the last summer, at the very beginning of the quarrel with Lord Sandwich, but was not attended to. H.R.H.'s strong partiality for his Lordship, I own I was not then aware of.

I have now told you a long story, because I thought it was not fit to leave you uninformed; but it is for your own information only, and you must not shew this letter or mention any part of it to any mortal. The use you are to make of it is for your conduct....

Powis House May 2nd. I had writ thus far of the former date, and my letter has lain by me till now, in expectation of Mr Jeffreys's setting out. During this delay some incidents have happened, which have, to a certain degree, varied the state of things. The clause in the Navy Bill about the sea-officers in half-pay was reduced very low in the Commons, with the concurrence of Mr Pelham, insomuch that the D. of Bedford and Lord S. complained much of this yielding, and talked loudly for retiring it upon the Report. This created a great difficulty; for either an opposition must have arisen between different parts of the administration, or else Mr Pelham must have submitted to those new courtiers, and that would have been understood as a proof from whom the *parole* was to be taken. At last H.R.H. put an end to this by overruling Lord S., and upon the Report, instead of mending the clause or restoring it to its former strength, it was entirely given up and left out. Thus ended *haec certamina tanta*.

What I believe greatly contributed to this was that the King, in the meantime, had given no kind of encouragement to this new connexion; but on the contrary had, in discourses in the Closet, declared himself very strongly in favour of the Pelhams, and indeed I believe his Majesty is at present in as right a way as possible, and the noise, which this new party had raised in the public, is much abated....



*Lord Chancellor to Lord Chief Baron Idle*<sup>1</sup> (written in consequence of a letter from Henry Pelham (f. 85) complaining of the latter's conduct).

[H. 75, f. 87.]

POWIS HOUSE, May 4, 1749.

MY DEAR LORD,

I received your letter of the 28th past, and am extremely glad to hear of your good health. But I was never more surprised or concerned in my whole life than at reading a letter of the same date from your Lordship to Mr Pelham, which he showed me yesterday. As to the affair, which makes the subject of the dispute, I never heard one word of it before, and therefore cannot pretend to enter into the merits of it. The point Mr Pelham strongly complains of is the style of your letter, and the manner of treating him and the rest of the Lords of the Treasury. The true regard and friendship I have long had for your Lordship, of which I hope I have given some proofs, made me look upon this with the greatest anxiety, and at the same time wonder how you could suffer yourself to be so far transported beyond your usual calm and decent behaviour to everybody, as to use some expressions, which I was sorry to read there. You call this proceeding of the Treasury a determination *against law and justice*, that it *savours strongly of tyranny, an arbitrary dictate, and assuming a power of dispensing with laws and acts of parliament*. I repeat these expressions, because I fear your Lordship writ in so much warmth as possibly not to remember them. People may be surprised into passionate expressions in speaking, but writing is a deliberate act, and *Litera scripta manet*. Therefore I have always thought that, next to judging or acting in a passion, writing in a passion was the most to be avoided in business, and he who falls into it commonly puts himself in the wrong. The act done was the act of the Treasury, and the imputation is upon the Board. But if it had only concerned Mr Pelham, to whom your letter is addressed, I should have imagined that his high station in the King's service, your Lordship's rank in the same service, and the strict friendship and connexion which have so long subsisted between that gentleman

<sup>1</sup> The Chancellor in recommending Idle to President Forbes on his taking up the appointment of Chief Baron of the Exchequer in Scotland, which he had obtained through Lord Hardwicke's support, speaks of him as one of the oldest acquaintances he had in the world and as having been called to the Bar at the same time as himself. But the Chief Baron was a weak man of only moderate ability. He had now got himself into a considerable scrape.

and myself, might have induced you to use terms better suited to all those considerations, and which might have equally conveyed your sentiments upon the right of the case. As I am now expostulating with your Lordship with great cordiality towards yourself, I cannot help suggesting that if the right or power of the Court has been infringed in this instance, it would have been more prudent to have consulted the rest of the Barons and to have made the step, which should have been thought proper to be taken, the joint act of the Court, by a proper and decent representation to the Treasury, both of the facts and the law, as it should have appeared to them. In such a method the matter might have been calmly and deliberately examined, and I am confident on which side soever the law had been found, it would have been submitted to. But in the method now taken, you appear at present to stand single, without taking any one of the Barons along with you. I write these things in the fulness of my heart, and out of a sincere regard to your Lordship. I beg you would consider them seriously and dispassionately, and endeavour to give such a turn to this affair as may avoid any ill consequences from what has already passed.

In your letter to me your Lordship mentions an intention of coming to London. It is always a great pleasure to me to see you here, but you will forgive me for putting you in mind that your Whitsuntide term, beginning on the 25th of this month (1st of June next,) there is now a particular duty of great consequence to the King's service, laid by Act of Parliament upon the Court of Exchequer in Scotland, [i.e. the business of the forfeitures] besides their ordinary business. Your Lordship passed the whole Martinmass term in London, and you cannot but be sensible that the eyes of the public are much turned upon the dispatch of the business. Complaints of delay are ready to arise, and hints of that kind have already been thrown out in both Houses of Parliament. I desire not to be understood by this to impute delay to the Court, for indeed I don't mean it; but it is my duty to lay these things before you as highly concerning the public service and the honour of the Court; and your own knowledge of the world will easily suggest to you what observations the Lord Chief Baron's spending two terms in the year in this town, in such a conjuncture, will naturally give occasion to.

I have writ with freedom, and I trust your Lordship will take it as proceeding from that friendship, which I have always sincerely for you....

[The cause of the dispute was the appointment of a person to be agent for the Treasury in Scotland other than the one recommended by the Chief Baron. For the latter's answer to the Chancellor's reprimand, explaining his conduct, see f. 89.]

*Duke of Newcastle to the Lord Chancellor*

[N. 34, f. 290.]

CLAREMOUNT, Nov. 5th, 1749.

MY DEAR LORD,

I am persuaded your Lordship is fully convinced of the real satisfaction I have in Col: Yorke's late promotion on his account<sup>1</sup>, but I own more particularly on yours, when I saw you apprehend your own credit and figure to be concern'd in it, both which no one person living can interest themselves more in than I do and have ever done. I am sorry to say that a very disagreeable incident has made me imagine I had more share in it than I even flatter'd myself with. [The Duke of Bedford had taken occasion to point out to the King that Lord Cathcart<sup>2</sup> was an older officer than Colonel Yorke, and would quit the service, in consequence of which the King had shown some marks of displeasure to the Duke of Newcastle on account of the latter's recommendation of the Chancellor's son.] I am sure it is unnecessary to observe who are your Lordship's true friends, upon this and all other occasions; but my dear Lord, flattery and complaisance, my Lord Duke thinks his due. If things are to go on, neither the King nor his servants must do too much of that. I can't bear, or support, to have every miscarriage from my best friends imputed to me; and then, if by proper application I may have been so happy as to get things over, the King's to be blown up and look grave upon me, from the absurd conduct of others. I desire I may be judged by my actions, public and private, and I desire my Lord Duke may be so too.... I say this in the utmost confidence to you; your Lordship's weight and character can protect me from it, but you must then resolve to use courage and resolution, and that will make yourself and me easy. Forgive me, my dear Lord, for this freedom; I have felt too much for near two years not to be a little sore....

<sup>1</sup> He was appointed aide-de-camp to the King on November 1. See pp. 148, 170-2; N. 34, ff. 269, 275.

<sup>2</sup> Also aide-de-camp to the Duke of Cumberland, and since the decline of favour with the Duke of the friends of the ministry, the first favourite. He was three years *older* than Col. Joseph Yorke but regarding his *seniority* see the following letter. His threatened resignation did not take place and he obtained a colonelcy the following year.

*Lord Chancellor to the Duke of Newcastle*

[N. 34, f. 292.]

POWIS HOUSE, Nov<sup>r</sup> 5<sup>th</sup>, 1749, at night.

MY DEAR LORD,

I return your Grace my sincere thanks for the honour of your private letter and for all the goodness which you express in it for me and my family. I never doubted of the kind share you take in everything that concerns me or mine....I was surprized at the incidents related in your letter....The *gravity* of the King's behaviour to your Grace...would give me more concern than the success does pleasure, if it should continue, but I flatter myself it will not....His Lordship [Lord Cathcart]'s offering to resign his commission (from whatever advice it proceeded) is to me surprizing. Why did not all the Lieut. Colonels, who stand upon the list before the three last promoted to be aides de camp, quit? and what has the King done in this instance? In the first place, I never heard that Lord C. ever asked to be aide de camp to the King, or that the Duke ever had a view to it for him. The scheme was of another kind. In the next place, his Lordship and Joe stand in the printed list as Lieut. Colonels by commissions dated the same day, and Joe was in the army and an ensign in the Guards, i.e. a Lieutenant, two years before him. Besides, perhaps I have vanity enough to think that his being my son, ought to be allowed to be some ingredient—I mean with regard to the station I am in in the King's service, not with regard to myself. But I take the whole of this to have proceeded from the new clique about H.R.H., accompanied possibly with some mixture of a hope in Lord C. that it may continue to drive on his other scheme of obtaining a regiment the faster.

I never doubted one moment, my dear Lord, who are my true friends, nor to whom I ought to be, and will ever be, a faithful servant. The complaisance<sup>1</sup> your Grace mentions was, upon my honour, never intended with any other view but that; and if it has been at any time mistaken, it was still well meant. In my little way I have never used to want courage or resolution in any cause of your Grace's, even in the most critical circumstances, and you will ever find me acting upon that principle, however I may, thro' error or weakness, fail in the execution.

I am with my whole heart, my dear Lord,

ever yours

HARDWICKE.

....

<sup>1</sup> To the Duke of Bedford, above.

[On June 22, 1750 (N. 36, f. 145), the Chancellor gives the Duke of Newcastle an account of a visit paid by him and the Archbishop of Canterbury, on May 30, to the Prince of Wales, who had summoned them to obtain directions concerning the baptism of his child, born on May 13. The Lords of the Regency, however, could give none, not having received any from the King. The child was baptised on June 17 by the name of Frederick William.]

*Duke of Newcastle to the Lord Chancellor*

[N. 36, f. 214; H. 62, f. 251.] Very secret, to yourself only.

HANOVER, July 12, 1750.

MY DEAR LORD,...

I shall confine this letter singly to myself: and must begin with what most nearly affects me, viz: a great alteration of style and manner in my brother's late letters. I do apprehend this change arises from my private letter to him about the late Royal parties<sup>1</sup>.... 'Tis now I summon all your friendship: and, as a mark of my firm dependence upon it, I shall acquaint you with some circumstances [namely the coolness and reserve of the King and of Lady Yarmouth], that I have not mention'd to my brother, and which confirm me in my present resolution [either to procure the removal of the Duke of Bedford from the office of secretary to that of Lord President and the "appointment of a Secretary of State upon whom I could entirely depend and who would have a proper deference for one who has been in that office above six and twenty years," or else retire himself to the President's office<sup>2</sup>].

I own I had flattered myself that my brother began to be convinced of the necessity of an alteration, that he was pleased with my manner and matter and with my unreserved confidence in him upon everything. I was led into this opinion by most of his own letters, by two very remarkable ones from my Lord Lincoln, and by one which I have had from Mr Pitt, who wrote in the handsomest and most friendly manner imaginable upon the subject, took notice of my brother's great satisfaction with me, and concluded with the strongest wish for success to all that I was doing abroad, and to everything that I might think necessary for my own ease when I came home. This conclusion, tho' very kind in him, did give me hopes, that he had known, or thought, my brother not so averse, as by the tenour of his late letters, I must suppose him to be.... In short, all my own friends have made it necessary, and they must take the consequences for their pains. I am much easier in the event than they imagine. I know, my Lord, you have often thought

<sup>1</sup> The D. of N. objected to H. P.'s attendance at the Duke of Cumberland's and Duke of Bedford's parties. See pp. 86, 99.

<sup>2</sup> N. 36, f. 239; H. 62, f. 263. Cox's *Pelham*, ii. 354; also H. 62, f. 240 and N. 35, f. 365.

me too vain. But one in my station must sometimes speak for himself. I think the Secretary of State who in the then circumstances made the Peace with the consent of every one of our allies, has preserved it upon the same foot, has united most of the considerable princes of the Empire, and (if it shall so happen) has *sans coup férir*, or much money spent, chose the Archduke King of the Romans, may retire to be President of the Council with some satisfaction to himself: and now I fancy you begin to think me in earnest. You see how much I depend upon your friendship, or I could not write to you in the manner I do. I write to nobody else so. I only expect as unreserved a letter in return, which I shall ever value, and am most sincerely and unalterably yours

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 36, f. 266; H. 62, f. 268.]

POWIS HOUSE, July 5th, 1750.

...For God's sake, my dear Lord, don't imagine that my not writing by every opportunity proceeds from any reserve towards you, to whom I have the most faithful and invariable attachment, and with whom I have no reserve. The real reason is that my time has of late been so entirely taken up by very long and intricate Causes, which requir'd consideration as well out of court as in it, that in truth I have not had leisure frequently to write letters of political speculation, or even to write at all, unless it was necessary. And if this should happen again, be so good as to have so much consideration for me, as to impute it to some such unavoidable cause....

If you will suffer a word of advice from me, it shall be to appear to put the best construction upon the conduct of those, whom you have reason to think your friends, and not at this time to create a coolness in them....

*Lord Chancellor to the Duke of Newcastle*

[N. 36, f. 363; H. 62, f. 275.]

POWIS HOUSE, July 13th, 1750.

MY DEAR LORD,

I receiv'd the honour of your Grace's packet by the messenger on Tuesday, and from your short letter which I happen'd first to open, receiv'd great satisfaction as to the state of public affairs, for which we are so much indebted to your Grace's dexterity, and to your indefatigable labours where you are. But I must own, when I came to your very secret letter<sup>1</sup>, that fill'd me with more

<sup>1</sup> See above, July 3/14.

than a proportionable degree of concern and uneasiness, which have remained upon my mind ever since. I had a long conference on Wednesday night with Mr Pelham on the subject of your letters to him, and produced your short one to me and no more. In this I obey'd your Grace's commands, tho' if he should come to the knowledge of my having receiv'd a longer packet by that messenger, (which is not impossible) it may give him jealousy, and be attended with disagreeable consequences. From hence you may be sure that I was perfectly silent upon the alteration of the King's and Lady Yarmouth's behaviour to your Grace, tho' I found your brother had at least suspicions of the former....

Your brother was very full of complaints of the manner in which your Grace takes some expressions in his letters, disclaimed the meaning you put upon them, protested there was no change in him, that he had no intention of giving you the least offence; that he thought it his duty to tell you his opinion on points of public business, that he was very far from having any dissatisfaction in the present situation of foreign affairs....We next discuss'd the great point of *the resolution* your Grace has declar'd. He profess'd himself entirely of opinion against it; that it could not be; apprehended the worst consequences, both to yourself and the public; wished the other scheme of your Colleague's changing his office could take place;...and repeated what he had formerly said, that it was his opinion that it could be brought about no other way but by direct removal. I find him every day more and more dissatisfied with the Duke of Bedford;...and [he] wished for a more intelligent, useful secretary in his place. But how to bring this about he did not know....We reason'd upon this a good while, and I pressed him to make *further efforts*....

Here it is that your Grace is pleas'd to summon all my friendship. It was unnecessary to do it in so solemn a manner. My best advice and most faithful service are ever at your devotion; and when I presume to give it, you may be assur'd it is always sincere and well-meant. But I am, to the last degree sensible, that it is above my ability to advise you upon this nice and delicate question, which is rendered more delicate by the circumstances added in your letter to me, which are not disclosed to your brother. But tho' I am really unable to advise, one cannot help having an opinion about it, and my sincere opinion is against your Grace's attempting to carry this scheme into execution whilst you are abroad. In forming this opinion I do, in the first place, assure

your Grace that I have laid myself entirely out of the question. After having drudged in the laborious office of Chancellor near fourteen years, I have no fondness to keep it longer, especially at near three score. 'Tis a constant round of the same fatigue. The incentive of ambition is quite over. The profits of it I don't now want or value; and if I can't have the satisfaction of serving with my friends, I can have nothing to make it tolerable.

My reasons are entirely drawn from the consideration of the public and yourself.

As to the public, you know my opinion that it will suffer prodigiously by losing your service in this office. On that head I will not say all I think, because I would in this letter avoid all appearance of flattery. If your Grace was in the late Earl of Sunderland's situation and could remove from one office to another, still retaining the character and influence of prime minister, the case would be different. But your own scheme, and the motives to it, speak the contrary to that. In this situation, I think it will be impracticable for your Grace to name your own successor. Those you leave behind won't take Sir Thomas Robinson. Amongst other reasons, it would be looked upon as a mortifying stroke to Lord S[andwich]. The King would not take my Lord Chesterfield, neither do I think he would serve with the Duke of Bedford. It is therefore my firm opinion that the King would immediately send for my Lord Granville. How could you serve as President under him, or how could the party endure it? For I cannot agree that the prejudices of your friends against his Lordship are got over.

As to yourself, your Grace must give me the indulgence to speak freely. It is my duty, especially as you summon me to it. I think it would be represented in the world as your quitting the field and leaving a complete victory to your adversaries. This reflection you would not easily bear.

For your Grace to continue at court in the President's office and see all the business and power, the access to the closet as well as to the other branches of the Royal Family in other hands; suppose also that they should happen to make their court so well that for some time the appearances of favour and countenance on that side should increase;—would not this be a scene of perpetual uneasiness and dissatisfaction to you, and keep your mind in constant agitation? I protest, for my own part, I would much rather quit the court entirely than be in such a situation.

If you take the President's place, you must either make yourself



a mere cause-hearer, or else be a party at political conferences and meetings. The first I take to be impossible. In the latter you would find more contradiction and uneasiness, without the power you have now. Don't flatter yourself, my dear Lord, that after having been 26 years in the office of Secretary of State, you shall find any relief in retiring to that of President. It never did happen nor ever will. In this consideration, what you say of an alteration in the King is certainly very material; but of this it is impossible to judge without knowing the nature and extent of it. If it proceeds from any real alienation, you won't be more easy in the President's office. But, from your own account, this alteration seems to me of another kind.

Your Grace owns that he does what you wish and propose, both as to English affairs and foreign affairs. That takes in the whole circle of real business. His reserve, or want of good humour now and then, may proceed from different causes. May it not have proceeded now from his illness—pain—apprehension of such a distemper as the gout returning and giving him frequent vexations? Your Grace knows the King much better than I do, but I should think him of a make likely to be affected by such incidents, especially when they come upon him at a time, and in a place, where he had promised himself nothing but amusement and pleasure.

But you say he assumes to himself the sole merit of the measures of electing a King of the Romans, etc. For God's sake, my dear Lord, let him do so, and flatter him in it. A Prince cannot make his minister a greater compliment than by making his measures his own. I have heard it has been no unuseful art in some ministers to give things that turn to their masters.

As to the *great Lady*, your account of her behaviour is indeed surprizing. It has been for some time a mystery to me. Your Grace knew long ago what was my way of thinking about suffering some other persons to fall off from you, and depending entirely upon her. But it is hard for me to persuade myself that she can really be in the same system with the D[uke of Cumberland] and the Pr[incess Amelia]...

To all this Your Grace will be apt to retort—But what is to be done? Am I to go on for ever thus yoked, and have no prospect of deliverance? I think not; and I think further that there is a prospect of deliverance, not very remote, tho' not immediate.

Your Grace mentions your resolution not to take another Hanover journey. God knows, that is a very remote consideration.

You are a much younger man than the King;—look forward to His Majesty's age two years hence, and consider what is the probability of another Hanover journey, especially if infirmities should increase. Surely such a distant possibility can furnish no reason for taking a present measure<sup>1</sup>.

But your Grace will still ask what is the prospect of redress? As to that, I really think that the Duke of Bedford's manner of executing his office, whatever it may be for the public, is the luckiest circumstance for you *personally* that possibly can be. I am thoroughly convinced that your brother is now heartily tired of him, and would be glad to find a method to get rid of him, consistent with his own way of thinking. The experience of this Regency must have convinced every Lord who attends that Board of the same thing. His unpopularity increases every day, and he is sensible of it. Add all these together, and consider whether, at the foot of the account, it does not appear that he is doing his own business for you; and I really think that with a little patience, the thing will be brought about in no long time after you come home, provided you keep your hold of the King; whereas, if you should prematurely propose your present scheme at Hanover, I can't pretend to foresee what may be the consequence. It will give new spirits and minister new cause of triumph. Neither is there any necessity for it, for the President's office may be kept open as long as you please without inconvenience. This suspension will leave both doors open.

Your Grace thinks this a favourable time to retire to be President of the Council, after making the Peace with so much advantage, and the other instances of conduct which you have just reason to be proud of. My dear Lord, whenever you retire, it will be *satur gloriæ*<sup>2</sup>. Nobody can have more real concern for your honour and fame than I have. Posterity will do it justice, but nobody ought to rely upon their contemporaries for such retribution. Besides, I imagine you would wish to finish the affair of Spain whilst you are in your present situation.

I fear I have tired your Grace. I am sure I have tired myself. Whatever I have said proceeds from the sincerity of my heart. I will revolve this important question over and over again in my mind, and when anything further occurs, will submit it to you. I understand your Grace has not writ to the D[uke of Cumberland]

<sup>1</sup> The King made two more Hanoverian expeditions after this one, in 1752 and 1755.

<sup>2</sup> That was just what the D. of N. could never be.

since you left England. You may remember I was humbly of opinion that it was right for you to seek an occasion of doing it, and I think so still. It is impossible to want topics.

I had writ thus far when your Grace's *scolding letter*<sup>1</sup> of July 6/17 came in. For God's sake, my dear Lord, don't be angry with me for what I can't help. My time is not at my own command, and I hope my last letter has satisfied you. 'Tis easy to guess from whence the stories of the parties<sup>2</sup>, which have been echoed to you, come. I have not heard of any new ones. Possibly your Grace may hear that I have been at Woburn, and that you may know the truth, I will tell it you myself. I went to Wrest, as I have sometimes done for three or four days only, between the last day of the term and my first Seal. On Friday evening I received a letter from the Duke of Bedford "that he wanted my advice about issuing warrants for taking up two persons in Staffordshire on account of a treasonable letter, that he had all the papers at Woburn, and would bring them over to me the next day in the forenoon." I considered this would confine me the whole day, whereas my business there was air and exercise, so I returned for answer that I would wait on his Grace. I took my horse the next morning and rid to Woburn, read over the papers, settled the warrants, rid about the park for an hour and return'd to my son's to dinner. This is the whole true history; what the fabulous may be I can't tell....I am (I mean so much of me as remains undissolved by the burning heat we suffer here) with my whole heart, my dear Lord, ever your's

HARDWICKE<sup>3</sup>.

*Lord Chancellor to the Duke of Newcastle*

[N. 36, f. 467; H. 62, f. 303.]

July 27th, 1750.

[He advises the Duke to inform his brother of his changed position at the court, and knows no other way of getting the better of a difficult situation of this kind than] with a certain firmness of mind, to overlook the low and petulant parts of it, to go strait forward with prudence and resolution in the great road of material business and service, to cultivate and cement one's friends of which your Grace has a great many, and by all these means to create a conviction in the mind of the King that you can do his business, and can support both that and yourself...

<sup>1</sup> The Duke's own expression.

<sup>2</sup> At Woburn (where the Duke of Cumberland and Princess Amelia had been present) and which aroused the D. of N.'s jealousy, f. 275; above, p. 93.

<sup>3</sup> Further H. 62, ff. 279 sqq., 304.

[On August 17, 1750 (N. 37, f. 175; H. 63, f. 11), the Chancellor advises that, in filling up vacancies in the administration,] persons of weight and influence in the nation ought to be looked out and united with you if possible. Little people, how much so ever liked at Court, will not answer this end nor bring any reinforcement.

*Right Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 102.]

GREENWICH PARK, Aug. 19, 1750.

...You see his Grace is in high spirits; his Duchess, I thank God, recovered....All he says about a certain Lady, I understand. He would in the winter, I know, talk to her on subjects she chose he should not; and the King was, I also know, averse to any change in his administration, which I have constantly told my brother he was; *that* in my opinion occasioned the coolness he talks of before they left England....You see I am at present very well with his Grace, but I doubt it is all founded upon an expectation of my being for certain changes, which your Lordship knows I am not, if they can be possibly avoided. One would think he had never heard of this country, when he can seriously name such colleagues as he does. I hope however, and believe, nothing will be done till the King comes over....

[The Duke writing from Hanover on September  $\frac{8}{19}$ , 1750 (N. 37, f. 369; H. 63, f. 49), recommends Lord Holderness, who had already been named by the King, to be the Duke of Bedford's successor, as one who had ability and "who will give no uneasiness to his companions." To the taking in of Lord Chesterfield, as Henry Pelham had suggested, he objects that it would make Lord Granville desperate.]

*Right Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 105.]

Sept. 8, 1750.

MY DEAR LORD,

I send your Lordship by his Grace's desire a long voluminous dispatch I received yesterday morning<sup>1</sup>....I have read over the long letter three several times, and I protest to you I can make neither head nor tail of it; there are so many contradictions in it and, in my poor opinion, such strange flights, that I scarce know what it tends to. He seems still angry with, and jealous of, the Lady, and yet puts his full confidence in her. He tells me everything is, as I desire, postponed till they come to England; and yet shows me plainly that all the employments are provisionally agreed to, as far as His Majesty and my brother think necessary. Who will then burn their fingers with giving other advice? I am sure I will not,

<sup>1</sup> Of September 2/13, printed in Coxe's *Pelham*, ii. 383, informing his brother of the King's intention to get rid of the Duke of Bedford, and suggesting that H. Pelham should write to the King to support his resolution.

and so I have sent him word. I judge the whole of his letter to be this, that he desires to get rid of the Duke of Bedford in the Secretary's office at any rate, and tells me plainly, if it is not so, I am the cause of it, and at the same time he says the Lady has stopped it hitherto, and would be glad to do so still if she could. He says in another paragraph he could have done it two years ago, and even two weeks ago, if he had pleased, but out of regard to me he did not. What can one make of all this? The next thing is he seems almost determined to make Lord Holderness Secretary of State; I am certain I have no objection to that Lord, but I fear it will be thought an improper choice. I find his Grace, and the King also, thinks there is nothing necessary to make a Secretary of State but crossing the water, and having credentials to one of the principal courts as a foreign minister<sup>1</sup>; I heartily wish they may find it so. But it is the last part of his letter which strikes me the most; I mean the great fear he has of offending Lord Granville and the plain desire he has of bringing that Lord into the King's service. I have heard that suggested by the Duke of Newcastle's enemies before this time, but I never believed it till now. My God! how little does he see his own situation, and how eagerly does he pursue his own destruction. I have wrote to him on this point very sincerely, but I hope very kindly<sup>2</sup>. I have told him that if he thinks there is the least variation in the minds of sober people with regard to Granville, he is exceedingly mistaken. I have showed him also how incompatible such a scheme is with my continuing where I am; at the same time, I have declared I will enter into no cabal to keep him out. The King, for me, shall do as he likes; but then I have nothing to answer for in the consequences. I have endeavoured to write as kindly and as clearly as I could. I have omitted taking the least notice of all his reasonings. I have referred to my former letters as to my opinion, and concluded with desiring only that I may have nothing to do with any of these dispositions. You may depend upon it, my dear Lord, that I have wrote with great temper. I do not take anything amiss of my brother, tho' in this long letter there are contained as many things contrary to my sentiments, as could be well put together. I wish your Lordship would read over the letter carefully and then, if it is not too much trouble, I should be glad to know your thoughts upon it, that I may correct my own by your better judgment, if there is any great difference between us. I look upon the affair of the Duke of Bedford to be over; they seem all to wish it *abroad*, and I have

<sup>1</sup> Lord Holderness had been ambassador at Venice and at the Hague.

<sup>2</sup> N. 37, f. 343. The letter may have been "sincere" but was scarcely "kind." In it he repudiates any intention of proposing "disagreeable changes," and insinuates that the Duke, after the way of courtiers, has shifted this on to his shoulders. He will have nothing to do with the Duke of Bedford's dismissal and will not propose it to the King, and the Duke will certainly be blamed for effecting it, though in fact it may be the King's own action. He objects to taking in Lord Granville also, as one who will support the Duke's ambitious foreign policy.

some reason to think it is not less desired *at home*. His Grace grows impracticable, even to his most intimate friends, and I believe my Lady Duchess [of Bedford] and Lord Sandwich both wish him in another office....

I am my dear Lord [etc.]

H. PELHAM\*.

[In answer to the Duke of Newcastle's letter of September 3, 1753, the Chancellor writes on September 20 (N. 37, f. 448; H. 63, f. 72) disapproving of the appointment of Lord Holderness as did Mr Pelham, as too inexperienced, and attached to the connection of which the Duke was justly most jealous, as well as of the inclusion of Lord Granville. The latter] can never be your friend or support. Let him come into what office he will that is fit for him to accept, he will be considered as the King's foreign minister; to which his own vanity will contribute, and he will soon effectually be so, as well as get the ascendant with the Lady [Yarmouth]<sup>1</sup>. As to Lord C[hesterfield] your Grace knows I have no partiality for, nor intimacy with, him; but what pretence Lord Granville can have to take it as a personal offence to himself, if the former should have an employment, I cannot well comprehend. [He concludes by suggesting the Duke of Rutland.]

*Duke of Newcastle to the Lord Chancellor*

[N. 38, f. 33; H. 63, f. 80.] Most secret.

HANOVER, *Sep. 26*  
*Oct. 7*, 1750.

MY DEAR LORD,...

After I thought everything was upon the point of being settled almost to *everybody's* satisfaction, your Lordship will be surprised to see the *discontent, uneasiness, jealousy* and distrust, which fill all his [Henry Pelham's] late letters....

It must, my dear Lord, create an opinion in me that when it comes to bear, my brother apprehends the consequences of my being easy, master in my office, of my having a colleague agreeable to me who will not thwart me, before whom I can talk to the King, and with whom I can be free enough to desire (if necessary) that I may see the King alone. This must be the only objection to my Lord Holderness,...and it is that which goes to my heart. I am to be hampered, in order to prevent my overbearing credit with the King; when, God knows, I have daily proofs that, some way

\* It is [a] great pity my Father did not preserve his answers to these very remarkable letters." H. (H. 75, f. 114.) [These are now, for the most part, supplied from the Newcastle MSS.]

<sup>1</sup> These fears, however, proved groundless.

or other, they have found means to weaken and sap that so, that even in conjunction with you all, it will be hardly sufficient to carry things on to all our satisfactions, and this you will find a truth.

I must remember (which I had hoped he had forgot), what my brother once told me emphatically, "The cabinet council will not suffer you, or bear that you should have a brother secretary entirely dependent upon you." This explains the whole....

The King names, or rather flings out, my Lord Holderness. I knew no more of it, no more suggested it to the King, than your Lordship; but when the King named him I could not say it was an improper choice....I only beg this favour of you that, after having perused all the enclosed letters and compared them with this, you will have the goodness, the friendship for me, to tell me whether I am in the wrong; and if I am not, that you would say what you think proper to my brother upon a full information of the facts. I am sorry to acquaint you that things here are far from being as I could wish them. The day of the King's return, or rather leaving this place, is put off to the 30th of October, His Majesty's birthday, and happy are we that he will come away then....The true cause of the delay goes to my heart<sup>1</sup>. And here I may again observe to your Lordship, my friend; had I not been so unreasonably hampered at home, had I not had to fear from all quarters, had I been supported at court, I should have had more courage, than I own I have had, to have combatted those prejudices, those predilections, which have produced this delay in the King's journey....

*Duke of Newcastle to the Lord Chancellor*

[N. 38, f. 87; H. 63, f. 152.]

*Sep.* 30  
*Oct.* 11, 1750.

[The objections against Lord Holderness have taken their rise solely from the supposition] that he will behave in that office in a manner towards me, as a new secretary at this time of day should do....I will consent to *no* Secretary that I think will not be upon that foot; I have seen enough of the contrary not to run a third, nay a fourth time, into that difficulty....I believe your Lordship and I agree more as to my Lord Chesterfield than as to Lord Granville. I fear neither. I esteem the last the most for the great superiority of his talents and his right way of thinking in foreign affairs. But I opiniatre nothing. Lord Granville is dropped. I will never mention him more....Let me have another colleague, and then I am upon the level with all of you. At present I am alone, baited and the sacrifice. In short, I am quite weary. I do all I can to please and I can't do it; and so I will leave things to take their course, renouncing all imputation of

<sup>1</sup> "He is afraid of what he shall meet in England," the Duke says in his letter to Henry Pelham of the same date (N. 38, f. 41).

having *settled* any one thing here....Is there any acting upon any other foot, except one must not dare to speak, or think, without first being sure that it would be agreeable to any one certain person? That is a slavery that nobody but my Lord Oxford (and for ought I know my Lord Orford) expected. It is enough to give up one's opinion at last, as I have done in almost every instance<sup>1</sup>....

I am sure your Lordship will pity me when you hear that, with all this vexation from your side of the water, our great affair<sup>2</sup> (which is the vanity and object of my life, in foreign affairs) is like to miscarry thro' the weakness and absurdity, (if not worse), of our negotiators with the Elector of Cologne....

My dear Lord, don't take any part of this letter amiss. I mean very little of it to you. I am sorry you differ so much with me<sup>3</sup> in a few things, because they are essential to me in their consequences. I am cruelly hurt. Let me vent it to you, and I hope it will subside....

ever and unalterably yours

HOLLES NEWCASTLE.

*Right Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 109.]

GREENWICH, Oct. 6th, 1750.

MY DEAR LORD,

The packet which will be delivered to you by Tom Parker, arrived here about seven this evening; and tho' it is, both as to the public and private contents, the most disagreeable one I ever received, yet I doubt not your forgiveness for troubling you with it. To whom can one resort, either for counsel or comfort, but to one of your known justice and wisdom, and of experienced friendship to us both? As to his private letter, it is in the style of almost all that I have received of late. As God shall judge me, I don't know what he means by my uneasiness. I have wrote him word that I have none but the receipt of such letters. I endeavoured to form the letter he speaks of as much to his taste as I could, consistent with what he has always known to be my opinion; and even in that I have told him I would acquiesce in whatever he should think proper to do, provided, indeed, that Lord Granville was not to be introduced into the Council....I own to you my patience is wearied out. I don't know what will become of us; I heartily wish I was a private man; though the folly of my conduct, during the time I have been in a public station, very little qualifies

<sup>1</sup> As a matter of fact, the Duke nearly always gained his point.

<sup>2</sup> The election of the King of the Romans, above pp. 3 sqq.

<sup>3</sup> H. Pelham writing to the Duke on October 5, says: "I sent your letters, as you desired, to Lord Chancellor, who reasons upon the behaviour of Electors in general just as I do" (f. 103).



me for a comfortable retreat. Anything is better than the life I lead....

*Lord Chancellor to the Duke of Newcastle*

[N. 38, f. 112; H. 63, f. 164.]

WIMPOLE, *Octob<sup>r</sup> 7th*, 1750.

MY DEAR LORD,...

The subject of this dispatch<sup>1</sup> gave me the greatest concern; for I had conceived hopes that such altercations, which had often grieved me to the heart, had been over. Your Grace does me the honour to make me the judge, which of you is in the right or in the wrong. I look upon it as a mark of your friendship and confidence in me. But how is it possible for me to execute that office, or with what utility to either, between two persons who are *inseparable* friends, who ought to remain so, who must remain so, for both of whom I have the most faithful and inviolable attachment, and do my endeavour to use it chiefly to preserve that necessary union? The only use I can at present be of, is by holding a proper language to the person who is here [Mr Pelham], which I will not fail to do when I go to London, and that will be in a very few days. I had already writ to him on the last of the objections you state, I mean *that of having settled etc.* [the new appointments to the cabinet alone with the King at Hanover], and was so lucky as to urge the same argument in substance which you now insist on. I will not omit to enforce the whole more fully.

But permit me even here to add one word to your Grace, and that shall be, that the best way of putting an end to these disagreeable altercations is, in the first place, not to overthink the motives of them; and in the next place, to let them rest here. Write no more in that strain, unless unavoidably call'd upon to do it. Expostulations amongst friends seldom produce a good effect, and rubbing over a sore place always frets and irritates.

It always makes me very uneasy whenever your Grace has any complaint against me. I am so now upon what you say of my *sensibility*; but be assur'd I said nothing which could bear the interpretation your Grace puts upon it, much less deserve one tenth part of the explanation you have taken the trouble to make. Of this I doubt not to satisfy you when I shall have the happiness of seeing you.

Your Grace is pleased to suppose that when, in one of my letters

<sup>1</sup> The Duke's letter of September 26.

I named the Duke of Devonshire, I meant *another* Duke [*i.e.* the Duke of Rutland]. Upon my honour I did not. It is not my way to name one person and mean another. I had no notion at that time of the other Duke....I am extremely sorry that the [King's] journey is put off to so long a day on many accounts; but want no argument to convince me that it is not owing to your Grace....It has been reported that your Grace intends to return thro' Flanders by Calais. If so, you will probably be ten days behind the King<sup>1</sup>. Suffer an old friend and faithful servant to advise you not to do this on any consideration. Be at St James's as soon as your master....God send his Majesty and you all a quick, safe and happy passage, and believe me, my dear Lord, to be ever, as I most sincerely am,

unalterably yours

HARDWICKE.

...P.S. Just as I was sealing up my letter, Turner, the messenger, brought me your Grace's of  $\frac{\text{Sep}^r 30^{th}}{\text{Octr. 11}}$ ; and tho' I see you are a little angry with me, I thank you for the frankness of it, particularly the friendly conclusion....I hope, however, I may now be so happy as to satisfy you on one point. I assure your Grace, with the utmost sincerity, I never had the suspicions you charge me with. I give entire and absolute credit to the whole narration in your long letter....Be assured, my dear Lord, I take no part of your letter amiss. I know the most *vif* parts of it don't relate to me. Be so good, in your turn, as to take no part of this amiss, and to consider some things that are said in it. Your parody on my words about looking on a *certain measure* in one view only is a good one....As soon as I get to town I will talk with your brother about the *supplemental project* contained in your inclosures. I fear he will call it a *jeu* between the *three electors*, and be much hurt with it. We must do the best we can. Your Grace says nothing about the route you intend to take. Don't neglect the hint in my letter. God preserve you<sup>2</sup>.

H.

[On October  $\frac{10}{31}$ , 1750 (H. 63, f. 183; N. 38, f. 134), the Duke of Newcastle informs Henry Pelham that on proposing that the unfortunate Lord Harrington, who had incurred the King's hatred

<sup>1</sup> The Duke in his ill-humour affected to keep away and leave the field open to the ministers at home, to settle with the King the changes in the administration.

<sup>2</sup> Further, N. 38, ff. 124, 155; H. 63, ff. 166, 187.

by his support of the ministers in the crisis of 1746, and was now turned out of his Lord Lieutenancy of Ireland, should be given the place of General of Marines on his retirement,] the King was more enraged than ever I had before seen him upon the occasion. He said the General of the Marines was to be the reward for everybody that flew in his face; that that was the case of that old rascal Stair; that my Lord Harrington should have his ears cut off...He should not have it, if *he* could hinder it, and at last said, "He deserves to be *hanged*, and I am ready to tell him so."...

*Lord Chancellor to the Duke of Newcastle*

[H. 63, f. 193; N. 38, f. 172.]

POWIS HOUSE, Octr. 19th, 1750.

MY DEAR LORD,

I remov'd from Wimpole to this place on Saturday last, and am once more embark'd in the Chancery galley, where the honour of your Grace's letter of the  $\frac{10}{21}$ , inst.<sup>1</sup> found me on Tuesday. It gives me the greatest concern to observe by the inclosures the same kind of correspondence continued, which I flatter'd myself, from certain explanations in some of the former letters, had been totally at an end. In my letter of the 7th O.S.<sup>2</sup> by the Post, which I hope came to your hands, I laid some reasons before your Grace why it was improper for me to give an opinion, who is in the right and who in the wrong. I hope they have satisfied you; for indeed, my dear Lord, I am convinced in my conscience, it would do no good but a great deal of harm. At least be content to let it rest so, till we have the happiness of seeing you in England; and then, I firmly believe, you will meet your brother in good humour, and many of those disagreeablenesses will subside and wear out of themselves, which by writing and being commented upon are kept alive, and temptations administered to a little positiveness, and perhaps a little pride too, to enter into justifications. In talking with Mr Pelham the other night on this topic, he protested in the strongest manner that nothing was further from his intention than to call in question the truth of what you had writ, concerning the first motion of *the removal* having come from the King himself... and meant only to convince you that other people, not so informed, would report and reason differently upon it....I long to see you well here....Ever yours

HARDWICKE.

<sup>1</sup> H. 63, f. 166.

<sup>2</sup> See above.

[The Duke arrives on November 1, 1750, in England from Hanover, but remains at Dover so as not to anticipate the King in arriving in London, "that I may neither cabal or give cause of cabal." (H. 63, f. 199.)]

*Lord Chancellor to the Duke of Newcastle*

[N. 38, f. 225.]

POWIS HOUSE, *Novr. 3<sup>rd</sup>*, 1750.

MY DEAR LORD,...

I had heard of your safe arrival there [at Dover] from Mr Pelham yesterday, which delivered me from the anxiety of your passage, tho' I find he wondered that you chose to stay upon the road....As to the grand domestic point, I think you will find him just in the way I represented in my last letter, which met your Grace on the road, and disposed to appear in good humour; and as to foreign affairs, I conjecture from something he dropp'd that he expects the demand of the Elector of Cologne of a sum of money, on account of the French arrears, must be complied with, but will not agree to go any further in pecuniary engagements. He did not say this directly, and I desire not to be quoted for it, but it is my opinion, and I give your Grace this hint that you may judge what turn to give your first conversation with him. As to the opinion of your friends concerning your conduct whilst abroad, you have had mine in my letters; and I must do your brother the justice to say that, during the whole summer, he has talked in the highest strain of approbation of your Grace's conduct in foreign affairs....Adieu till we meet, I am my dear Lord,

ever yours,

HARDWICKE.

[The Duke writes on Nov. 3 (H. 63, f. 201) still at Dover] I find...you are all amazed at my staying here. I wonder you don't see the reason, decency and regard to the King, and a declaration to all the world that whatever was in agitation was his Majesty's own measure.]

*Anonymous to the Lord Chancellor*

[H. 243, f. 145.]

*Nov. 23*, 1750.

Most noble Lord, I send you this to inform you of a resolution taken by three wicked men, that lately kept, or were concerned in keeping, of the publick gaming tables, that were lately broak to pieces, as they say, by your Lordship's orders. These men,

apprehending that you are an enemy to publick gaming, are determined to murther you in the same manner that Thomas Thin Esq<sup>re</sup> was murdered in the year 1682<sup>1</sup>, one night or other, as you are coming in your coach from council at St James's; for they say that you have robed them of a large estate, meaning the destroying of the Gaming Tables which brought them in great gain. These three wicked men are One George May, that lives at the King's Harms, a noted bawdihouse tavern, Catherine Street near the Strand, one William Maigerum, who not long ago kept a notorious bawdihouse tavern at the Mitre, in the Strand, but at this time he sells spiritous liquors at Hackney. The third person is one John Ridgway, that not long since kept a noted bawdihouse at the Casel, the back of St Clement's Church, in the Strand; but he has lately married a woman that keeps the Star Inn at Oxford and his going with his wife to Oxford occasioned the attempt of murthering you to be put off, untill his return to London, which is every day expected. Was enquiry to be made after the caricters of these three persons, it will appear that they are wicked and desperate men of very bad caricters. I dare not make myself known unto your Lordship or any of your Domesticks, for fear of being murdered myself and, altho' you are a Great Man, yet my life his as pretious to mee as yours his to you. The persons that where the owners of the Gaming Tables lately broak to pieces say that they have been robed of their fortunes and they are becum desperat, as the smuglars where, before there was a law made to punish them with death. Now, was there to be a law made to punish the owners or proprietors of any publick gaming table or tables with death, or any person or persons that shall erect or set up or cause any Mashcen to be erected or set up for publick gaming, by what name soever called, or any person that shall receive any part of the profits arising from the playing at such Mashcen or Gaming Table with death, with a reward to be paid to the person that shall make him or themselves Evidences against the owners of such publick Gaming Tables or Mashcens, and all persons, that shall be apprehended or taken in any house or any other place, where such Mashcen or Gaming Tables are plac'd at, to be sent to the House of Correction, and not to let them to be bailed untill they had been there three months, there might be a stop put to publick gaming which is at this time as great a nuisance as smugling.

Notwithstanding the Band of Locust[s] called Gamesters have been lately disturbed and dislodged from the Hoop Tavern in the Strand, they have had new Tables made and set up in Surry [Street], at a place called Cupers Gardens, opposite Summerset House in the Strand, and these Gamesters bost that they allow one Justice Hammond, who his a leading magistrate in the Burrow

<sup>1</sup> Thomas Thynne of Longleat (1648-1682) was murdered at the instigation of Count Königsmark, 12 February, 1682, in Pall Mall, near the present United Service Club. See his monument in Westminster Abbey.

of Southwark, two guineas a week for his protektion and connivance, and they say further that if any person should go to this Justice Hammond to make an Information against them, that he would let them know who the persons where that made such Information, and then the Gamesters would procure some wicked persons of their acquaintance to swear large debts or roberis against them, so that these Gamesters are determined to support themselves in committing cheats and defrawde by committing of perjury.

*Henry Fielding<sup>1</sup>, J.P. for Westminster, to Hutton Perkins,  
Secretary to the Lord Chancellor*

[H. 243, f. 147.]

BOW STREET, Nov. 25, 1750.

SIR,

I have made full enquiry after the three persons and have a perfect account of them all. Their characters are such, that perhaps three more likely men could not be found in the Kingdom for the hellish purpose mentioned in the letter. As the particulars are many and the affair of such importance, I beg to see you punctually at six this evening, when I will be alone to receive you, and am, Sir, your most obedient humble servant

H. FIELDING.

*Lord Chancellor to the Duke of Newcastle*

[N. 38, f. 381.]

POWIS HOUSE, Decr 12th, 1750 at night.

MY DEAR LORD,

Wall's letter of the 17th N.S. has made such an impression upon my mind, that I cannot help sitting down to write these few words before I go to bed. Surely what he there reports your Grace to have said to *him* concerning the Duke of Grafton cannot be true<sup>2</sup>. To such a man as Wall who, in the intimacy he lives in with him, is as likely himself to tell my Lord Duke as any man in the world; to one whom you suspect and are angry with. Whether Wall tells him or not, he will certainly hear it from some or other of the various hands thro' which these letters go; perhaps the Lady [Yarmouth] as likely to tell him as anybody. Your Grace knows he detests S[andwich], and that he despises the D[uke] of B[edford], and you know also how sensible he is of such

<sup>1</sup> The celebrated novelist, above p. 52.

<sup>2</sup> The allusion is to some incautious conversation of the Duke of Newcastle, which is not specified. Wall was the Spanish agent and minister; the Duke of Grafton, a peculiar character, was a staunch supporter of the Whig government and a member of the Cabinet as Lord Chamberlain.

reflections. Can anything tend more to drive him to them? Indeed, my dear Lord, this is not a time to force those from you, whom you have any reason to think your friends at bottom, whatever reason you may have not to be *quite* satisfied with them. The time demands that we should cultivate and make the most of them. Indeed such confidences will do more mischief than can be easily foreseen; and I fear this letter has had some operation upon the King's mind in the discourse of this very day. I write this in the fullness of my heart, and the uprightness of the intention must be my excuse for the freedom. I am, my dear Lord, ever yours

HARDWICKE.

Burn this.

*Duke of Newcastle to the Lord Chancellor*

[N. 38, f. 383.]

NEWCASTLE HOUSE, Decr 13, 1750.

MY DEAR LORD,

I never received any letter from your Lordship which I took kinder than this. It carries with it that sincere friendship which you have so long had for me. The paragraph in Wall's letter is not just what I said, but near it. Don't imagine it was a confidence. It was the breaking out of a wounded heart of one, who daily sees himself given up by his own friends and those whom he has most cherish'd, and many, who by his means, are now able to do him those friendly offices. Prudence does often (tho' not always) control me, and therefore these most kind hints from your Lordship will have their effect. Resentment to S[andwich], contempt of the D[uke] of B[edford] are not the motives that ought to influence the heart and actions of a friend in whom I have had an entire confidence for now near 30 years; and who has lived more days in my house than hours in all the rest put together. My dear Lord, I find myself in a condition where no man ever was before; nobody but yourself in [the] ministry avowing me; some getting off at my expense, and that, at a time when, (from, I will say, a successful and unexpected conduct) justice is done me everywhere abroad; and when, I thought, no enemy would openly dare, or any indifferent person be inclined, to refuse it to me at home. Think of this:—ask yourself also whether a contrary conduct in *my* own friends, would not have prevented the mischief, they and I now labour under. All these considerations make me, at least, feel the more the part your Lordship has acted, and be (if possible) more than ever yours

HOLLES NEWCASTLE.

[On December 15, 1750 (N. 38, f. 387), the Duke writes again. He will not go on in the present state of things, and he would "rather be Mr P[elham]'s footman than his Secretary of State." He wishes the Chancellor to plead his cause with the King.

On January 7, 1751 (N. 39, f. 51), the Chancellor informs the Duke of Newcastle that he has seen Mr Pelham the night before who was] ready to concur in putting an end to the disagreeable disputes between you two.

[On April 24, 1751 (H. 63, f. 248), the Duke of Newcastle begins a letter very coldly to the Chancellor as "My Lord," and signs it "your Lordship's most obedient humble servant"; upon which the second Lord Hardwicke notes, "This letter to my Father is writ in so unusual and improper a style, that the Duke must certainly have been in some *huff*."] ]

*Duke of Newcastle to the Lord Chancellor*

[H. 63, f. 251.]

WHITEHALL, May 3 [1751].

MY DEAR LORD,

I send you the draft of the [Regency] Bill which, (as you will see) his Majesty has fully approved, with one observation upon the form of the oath of the Council which, if it is, as the King conceives it, (that is the Council are to swear to serve the King *and his people*), I should humbly apprehend to be unusual and wrong.... I send it only that you may see the King's own mark on the margin of the oath. Your Lordship will be pleased to talk to the Attorney and Solicitor General about it. The King apprehends, it is swearing to the people....

*Duke of Newcastle to the Lord Chancellor*

[H. 63, f. 257.]

June 15, 1751.

MY DEAR LORD,

I must trouble your Lordship with an account of the extraordinary occurrences of yesterday. His Grace of Bedford had a pretty long audience and left the Seals, and procured two valuable reversions of two places in the West Indies for his two commis. When I went in, his Majesty scarce spoke to me. I gave him an account of the manner in which I had executed his orders, and of what the Duke of Bedford had said the day before to Lord Lincoln. The King replied, "Yes, he has quitted, and I have given two reversions to his commis." I asked H.M. whether he had determined anything about the successor. He muttered something like, "I don't know." He then ordered me to direct my Lord Granville to be at Kensington on Monday. I said, "To be



President?" "Yes." I then said a council must be appointed, which is accordingly ordered for Monday, and I beg your Lordship would not fail to be there, (My L[ady] Y[armouth], who is not disposed to think favourably either of my Lord Granville or his admission into the King's service, having asked me particularly how you *two* stood together). After some short discourse with H.M. about Lord Hartington<sup>1</sup>, whose warrant was signed, I took leave, when the King *very graciously* asked me whether my brother was without, and that he would speak to him. Mr Pelham went in, and then the whole mystery came out; that the duke of Bedford had quitted his service in the handsomest manner imaginable. It was all laid upon my treatment of him; that his Grace said to the King that I was of a temper to live with nobody, that I had forced out three (I think) Secretaries of State; that for himself he had bore everything, that he had never interfered in anything, had left the disposal of everything civil and ecclesiastical to me, and particularly had not even insisted upon the promotion of his own relation, Dr Bullock; and when his Grace had made his just remarks upon my past conduct, he then turned *prophet*, and foretold H.M. that I should do the same with his successor that I had done with him. In that he must be mistaken; for I defy the King to find such a successor as his Grace. His Majesty (who could best contradict these accusations, having himself more than once advised me to get rid of two of these three Secretaries of State, viz. Lord Harrington and his Grace himself) was, however, pleased to adopt all the Duke of Bedford's reasonings and complaints, and to add to Mr Pelham of himself, "Your brother will be jealous of Lord Holderness, if he continues to be of my parties at Richmond of Saturdays, and if he goes to *my son* and *my daughter*." I am sorry to say it appears that every word that the Duke of Bedford said, was put into his mouth by the Princess Amelia, and I wish the remarks upon it did not come from the same quarter....I went immediately to L[ady] Y[armouth], who, I found, knew all that had passed, and indeed behaved very properly to me. I did not complain, but expressed my satisfaction that, when it appeared there was an inclination to say every thing against me, nothing could be found out but this sort of accusation after twenty four years service;...— that his Grace was a great *seigneur* but a bad *prophet*. She took very well all I said, promised to make the best use of it to the King.... I pressed her to know whether there was anything but this against me....She said she knew of nothing else, and believed there was nothing *at present*; what there might be on Monday, when the Duke [of Cumberland] returned, she could not say, for *he* was extremely *piqué*; but she would watch countenances and tell me; this was very

<sup>1</sup> William Cavendish (1720-1764), fourth Duke of Devonshire 1755, Lord Lieutenant of Ireland 1755-6, first minister of the Crown 1756-7, Lord Chamberlain 1757-62, a man of high character and a staunch supporter of the D. of N. and Lord H. of whom hereafter. He was called up to the Peers this year as Baron Cavendish, and made Master of the Horse.

good, and proves all I ever said. Thus that conference ended, and better it could not end. Mr Pelham had a much longer with the Princess, who did not conceal her knowing everything; said that the King was extremely pleased with the Duke of Bedford, whom she much commended; and told my brother that the Duke of B[edford] had laid one guinea with Her Royal Highness that the King would speak to my Lord Sandwich on Sunday at Court<sup>1</sup>, and I beg your Lordship would have all your eyes about you, both at the King's Levée and in the Drawing Room, to see all that passes. Her R.H. was also pleased to talk pretty familiarly about me; Mr P[elham] takes that up. She said "Mr Pelham, I beg your pardon for being so free with *your brother*; you should excuse it, for *you have been familiar with my brother*." This alarmed my brother. He expressed great uneasiness at the insinuation, but it went off. H.R.H. also reproached Mr Pelham for having said, *he would never serve with my Lord Granville*. She owned the Duke of Bedford's offer to Lord Granville, and said to my brother, "Perhaps I know more of that than you do<sup>2</sup>." "I believe it, Madam," my brother replied. My brother told her that he would support the present system, or measure, to the utmost. Having now given you an account of these extraordinary conversations, I might leave the inferences to your Lordship; but I beg to make some remarks; first, that the resentment is levelled singly against me, that it comes from the Duke and the Princess, and that they have no other point to go upon but that old stuff of Sir Robert Walpole's, that I can agree with nobody, and that therefore the only point against me is what my own brother and my own friends have at times encouraged them in; 2ndly, that all my friends should do me justice upon this point. I know your friendship and sincerity; as I think it possible the King may speak to you tomorrow and give you some opportunity to speak to him, I must beg you would shew how cruel these accusations are, and particularly in this case, when it is evident that the removal of my Lord Sandwich, and not the treatment of his Grace, is the single reason of his quitting. I could also wish you would see Lord Granville and talk properly to him, or rather instruct him, how to talk to the King about the insignificancy of the Duke of Bedford and his clique.

I am ever and unalterably yours

HOLLES NEWCASTLE.

<sup>1</sup> The Duke of Bedford and Lord Sandwich retired together.

<sup>2</sup> The Duke of Bedford had apparently made overtures to Lord Granville, but the latter was already engaged to the D. of N.

*Duke of Newcastle to the Lord Chancellor*

[H. 63, f. 264.]

CLAREMONT, *June 22nd*, 1751.

MY DEAR LORD,

Since writing yesterday, I am determined to write to the King myself; and therefore I think it would be better that your Lordship should avoid any new conversation with His Majesty upon that subject. My letter is founded upon your last, and is so submissive and explanatory, that I think there cannot be the least objection to sending it, which I propose to do by Lord Holderness after Tuesday<sup>1</sup>. I will first shew it to your Lordship, and alter any expressions you would have altered. I am sure it is right (as things now stand). New matter might alter the case. I am strong upon the present foot, and therefore there I would leave it; and for that reason I would not have my friends give an opportunity for having the charge against me altered in any shape. I forgot to tell you that yesterday H.M. did not honour me with one word at the Levée, though he talked very merrily with my right and left hand neighbours, Lord Granville and my brother, between whom I stood, and even spoke to my Lord Bath....I am ever yours

HOLLES NEWCASTLE.

P. S. H.M. has learnt of his D[aughter](?), and in his Closet talks to H[olderness], without making me a part of the company.

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 7, f. 346.]

PARIS, *June 25th*  
*July 6th*, 1751.

MY LORD,

...I most heartily wish what H.M. has just done may turn out well for his service and the nation's. I was much surprized to find in the former part of your letter, that you were not of opinion with those who thought the D[uke] of B[edford] would resign upon Lord S[andwich]'s being turned out. Your notion must certainly have been founded on your own observation, or what had pass'd between his Grace and you; and that makes me suspect that some people, whom I wish had never been mixed in these cabals, exerted themselves to force him to take a step, which seems to have been so contrary to his inclination. I have been told here, and it came from Mons. Mirepoix's letters<sup>2</sup>, that Lord Sandwich was at Windsor Lodge, when the letter of dismission was brought him; that he was in conference with the Master of the house about an hour, and then set out for his house in Huntingdonshire without going to London at all. All these circumstances, added to the removals, give room, you will easily believe, to various speculations here....

<sup>1</sup> Printed in Cox's *Pelham*, ii. 401.<sup>2</sup> French ambassador in England.

*Lord Chancellor to the Duke of Newcastle*

[N. 40, f. 60.]

POWIS HOUSE, Aug. 13, 1751.

...I received from very good authority a piece of intelligence which (from your not having mentioned it), I am not sure your Grace has heard, and yet it is fit you should know it, that you may conduct your scheme accordingly.

The Duke of Bedford, in his valedictory speech to the King, (amongst other complaints) told His Majesty that everything relating to his service was so concerted as to serve your Grace's convenience and increase your power; that he could mention a hundred things, but would take notice only of one; that H.M. would find that, as soon as he was out of the Secretary's office, one considerable part of it, America, was to be lopped off and thrown into the hands of the first Commissioner of Trade, Lord Halifax; that this was an affair settled without H.M.'s privity; that it was true he (the Duke of Bedford) and Lord Halifax were not friends; but that was not his reason for mentioning it, for Lord Halifax might probably execute it as well as another; that his only reason for mentioning it was to shew the King that, not only persons were to be ill-treated and removed out of the way, but the chief offices of the state were to be mangled, altered and lowered at *their* pleasure, in order to promote the scheme of engrossing all power to *them* and their creatures. This is the effect of what I was told, and it wants no comment....

*Duke of Newcastle to the Lord Chancellor*

[H. 64, f. 3.] Very private.

NEWCASTLE HOUSE, Sept. 6, 1751.

MY DEAR LORD,...

Things at court remain...much upon the footing they were when your Lordship left us....The King is very gracious, civil, and indeed familiar, both at the Levée and in the Closet. His Majesty talks very confidentially upon foreign affairs, but is totally silent upon everything at home, and upon all employments that become vacant, upon which H.M. talks to nobody but Mr Pelham, who sees him but once or at most twice a week, but then he has long audiences. By this, and by Lady Yarmouth's manner towards my brother, and desire of frequent conversations with him, I have a strong notion that the King has formed to himself a sort of system, which His Majesty may think will answer all his ends,

viz. that of carrying on in the main his business with his present administration, and yet gratify the resentment of the Duke and the Princess Amelia against me. And the way of doing it is plain, to consult me and follow my advice in foreign affairs, which the King must know is his own plan, and at the same time to exclude me *totally* from any share in the home administration. This would certainly indulge the resentment of my enemies, and reduce me to make a most contemptible figure in the administration. The truth is, that in fact everything passes through my brother's hands, and I am, with regard to the King, as much a stranger as if I was not in the ministry. The truth is also, that my brother accepts this at least, if he don't promote it or approve it; and his constant court to Princess Amelia lays the foundation for it, and gives the King reason to think that by this conduct his administration may go on in the present hands, and his children's unreasonable resentments against me be gratified....My dear Lord, was there ever such cruel usage....I believe the like of this was never known to one, who labours as I do, for His Majesty's service....

Mr Pelham is much embarrassed, inwardly pleased with his great situation at home and great affluence of fortune, got singly by the court, whenever he leaves it....[He concludes by proposing a visit to Wimpole where he begs he may have "a warm room and a bed that has been constantly laid in."]

[N. 40, ff. 538-568.]

[The Duke of Newcastle in a long letter to Andrew Stone of December 8, 1751, relates the history of the recent domestic troubles. The original cause of estrangement between himself and H. Pelham arose in foreign policy; his own opinion, which was his real and sincere one, being more in agreement with the King's wishes than with those of his brother. He had lost the favour of the Duke of Cumberland and Princess Amelia by his quarrel with Lord Sandwich, when Henry Pelham had made close application to them and united with them with the object of isolating him. The Duke of Bedford was called in "to keep him down," and cabals were raised against him while he was abroad, when the King, of his own accord, determined on the removal of the Duke of Bedford. He returned and was ill-used, accused of having misrepresented what took place and not treated as a minister. The Duke of Bedford, on resigning, had left a legacy of malice against him; tho' his resignation and the access of office of Lord Holderness took place without his intervention. During the last week, however, he had noticed a change for the better in the attitude of his brother towards him; but Stone must obtain from Henry Pelham the restoration of a complete mutual confidence between them and an assurance that the coolness displayed towards him by the royal family would be discouraged. He believed that the King meant to take Lord Holderness instead of himself to Hanover next

time; in any case, he himself would not go as a clerk or a subaltern, but only as the King's minister, possessing his full confidence.]

*Duke of Newcastle<sup>1</sup> to Andrew Stone*

[N. 42, f. 63.] Very private.

HANOVER, May 1<sup>st</sup>, 1752.

DEAR STONE,

Johnson sent you by the last messenger a copy of my long letter to my Lord Chancellor<sup>2</sup>. I conclude you think that, upon the whole, I came off pretty well, tho' with the hearing of many most disagreeable things, and particularly with regard to my Lord Chancellor. It is amazing that anybody should endeavour to set the King against so good, so great and so valuable a man. I am afraid he has great enemies, and some cool friends, who may, by their silence or admissions, have contributed to this very extraordinary turn. All sort of personal disregard was shew'd. All his family *heap'd with favours*, his eldest son a teller of the exchequer; another son, a boy, a Plenipotentiary in Holland; another, all the things in the Law, which meant the Clerk of the Crown, etc. And this provoked me to say what I did. But the remark I make, my dear Stone, is, what has brought this upon him? His firm attachment to me; and what is worse, I am afraid, from more quarters than *one*. But the thing is done, and the Chancellor will be pleased with that<sup>3</sup>....

[On June 12, 1752 (N. 42, f. 404), the Chancellor had written an "ostensible" letter (*i.e.* one to be shown to the King), to the Duke of Newcastle, desiring the appointment in Chancery of the Chaff Wax for his nephew, Philip Billingsley, and that of the Clerkship of the Briefs, vacated by the latter, for his clerks, Robert Salkeld<sup>4</sup> and Carlton Hayward. At the close he inserted a paragraph dwelling on the fine appearance of the Hanoverian troops at the recent review in Hanover, to put the King in a good humour.

The Duke in answer on  $\frac{\text{June } 24}{\text{July } 5}$  (N. 43, f. 90) writes that the request has been granted but with a very bad grace.] I must own, your long ostensible letter about it frighten'd me, and the paragraph about the troops at the end, I thought not right judged. *We* are

<sup>1</sup> "The King set out for Hanover. The Duke of Newcastle...would not venture himself in any yacht but the one in which Lord Cardigan had lately escaped a great storm." Walpole, *George II*, i. 278.

<sup>2</sup> See vol. i. pp. 553-6.

<sup>3</sup> The Chancellor's request had been for Lord Breadalbane to be chosen a representative Peer for Scotland in the House of Lords.

<sup>4</sup> Probably a son or nephew of the Chancellor's old-law tutor.

not to be reasoned with. We hate *detail*, and we do find out when paragraphs are put in to please us for other ends<sup>1</sup>.

*Lord Chancellor to the Duke of Newcastle*

[N. 45, f. 177.]

POWIS HOUSE, *October 27th*, 1752.

MY DEAR LORD,...

I observe your Grace's account of your conference with L[ady] Y[armouth], and am sorry for her accounts of the King's humour. I fear it will grow worse rather than mend after 69<sup>2</sup>. I hope she will execute well what she has undertaken to inculcate, about the necessity of giving countenance and support to the administration. If *we* [*i.e.* the King] are determined to continue this administration, 'tis wonderful this should want inculcating; for not to do it is to weaken and disable the hands and instruments, by which *we ourselves* must act. What your Grace says about that channel I take to be very true; but, as things are now situated, it is necessary to cultivate and make the most of it. You and your friends have contributed to make it stronger and more operative than it was, and it would be ridiculous not to turn it to your own account, but to leave others to make the advantage of it....When your Grace returns I am confident we shall meet with great joy and cordiality; and, as your Grace has writ your mind so fully about *acting in thorough confidence and concert*, I daresay you will not think it necessary to repeat much of it in discourse; for I have reason to think that kind of language is sometimes understood as conveying reproaches for what is past<sup>3</sup>....I am unalterably, ever yours

...

HARDWICKE.

*Hon. John Yorke to the Hon. Philip Yorke*

[H. 26, f. 85.]

POWIS HOUSE, *Novr. 10th*, 1752.

...Lady Anson tells me she has wrote word to Lady Grey of Papa's having carried me to the Lord Mayor's entertainment at Guildhall....Before Papa took his leave of the company, Lord Mayor desired to speak with him in private, and when they were together made him many fine speeches on the part of the city for the honour

<sup>1</sup> The King's hostility at this time was owing to the intrigue of the Duke of Cumberland and Princess Amelia against the Duke of Newcastle. On his return to England, and on the application of the Chancellor himself, this request was granted very readily.

<sup>2</sup> The King's age.

<sup>3</sup> This was a very judicious hint; see above, p. 37.

of his presence upon that and so many former occasions<sup>1</sup>, and how kindly they received that mark of his attention. His Lordship then desired to know whether he might have any hopes that his Majesty would pass through the city on his return; that if it was intended, he would upon notice being given, cause the Mansion House to be illuminated that evening, would invite the court of Aldermen to supper, and as his Majesty passed by, they would come out and drink his health. This you may be sure<sup>2</sup> was not discouraged; Papa promised to acquaint the Secretary of State, which he did as soon as he got home....

*Hon. Charles Yorke to the Hon. Philip Yorke*

[H. 12, f. 221.]

Nov. 18, 1752.

The King came to St James's this evening, at half an hour after eight o'clock, as the park guns informed me.... The notice of his arrival by a messenger, at 5 o'clock this afternoon, dispersed a great audience assembled in Lincoln's Inn Hall, to hear the argument in Dr Schomberg's case against the College of Physicians<sup>3</sup>, my Lord being obliged to go immediately to St James's....

*Lord Chancellor to the Hon. Charles Yorke*

[H. 5, f. 128.]

POWIS HOUSE, May 12th, [1753] at night.

DEAR CHARLES,

I forgot to mention to you an argument which I have heard as coming from Mr Fazakerley<sup>3</sup>; *that clandestine marriages are a mischief or inconvenience to private families, but not to the public*. I think this is too weak to be his; for what is the public or community but an aggregate of particular families or persons? and what is, or may be, a general mischief to them, must be so to the public. The same argument might have been used against the *will bill*<sup>4</sup>, and with rather more reason; for it is in most cases very indifferent to the public whether John or Thomas enjoys an estate.

Yours affectionately,

H.

<sup>1</sup> The Chancellor appears to have made a point of dining every year with the Lord Mayor and Corporation. See Dodington's *Diary*, 12, 113.

<sup>2</sup> Isaac Schomberg (1714-80), physician, petitioned the Lord Chancellor and several of the Judges, as visitors, to compel the College of Physicians to admit him into their society. After several hearings the visitors decided, July 25, 1753, that they had no jurisdiction. Charles Yorke was one of the counsel for the plaintiff (H. 718, f. 28).

<sup>3</sup> The Jacobite Nicholas Fazakerley (see vol. i. 157 n.), still a zealous antagonist of the administration; M.P. (and Recorder) for Preston. He had lately been active in opposing the Regency Bill, the Jew Bill, and the Marriage Act. He died in 1767, without even being appointed a K.C.

<sup>4</sup> See p. 53.



*Duke of Newcastle to the Hon. Charles Yorke*

[N. 46, f. 529]

NEWCASTLE HOUSE, Thursday morning, May 31, 1753.

DEAR SIR,

You must forgive my presuming in this manner to return you my most sincere thanks for your noble defence<sup>1</sup> yesterday of my best friend and the best servant, that ever prince or country had. Your tender relation to him does not unite you more than that long friendship (which will ever be my greatest honour), which has subsisted between him and dear Sir, your most truly affectionate

friend and sincere humble servant

HOLLES NEWCASTLE.

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 8, f. 151.]

HAGUE, June 5th, 1753.

MY LORD,

The mail which arrived yesterday brought me the honour of your Lordship's letter of the 1st inst.<sup>2</sup>, and I can't refuse myself the satisfaction of conveying, by the first opportunity, my sincerest congratulations on my brother Charles's success in the House of Commons, upon which there is but one voice. If I may be allow'd an honest jealousy, I can't help envying him the glory of standing up as your Champion in the face of the world, against envy, hatred and malice and all uncharitableness. I confess I would have given up many advantages in life to have had such an opportunity, and to have acquitted myself of it as well. Your Lordship's services to your King and country will be recorded in the annals of our country and the minds of all good men, when the names of those, who are weak and vain enough to attack you, will be buried in oblivion. I am infinitely obliged to your Lordship for the detail you are so good as to give me of the rise and progress of the bill in question. I, who have spent my life in foreign countries, know what a reproach the frequency of clandestine marriages has brought upon our nation. We are ambitious of passing for a wise people, and have permitted till this time one of the greatest evils to subsist, which can be found in a civilized country. Europe applauds what is now doing and, happily for the opposers to this law, neither they nor their motives are sufficiently known to be remembered to the next session. If the view was to found an opposition, they seem to have defeated their own scheme; but I should rather suspect the attack upon your Lordship is owing to a spirit of revenge for the

<sup>1</sup> Charles Yorke's defence of his father against Fox's attack, on the occasion of the Marriage Bill; above, p. 65. Charles Yorke's answer, f. 531.

<sup>2</sup> Not in the MSS.

generous defence you undertook of your friends in a late proceeding in the House of Lords!....

*Sir Thomas Robinson to the Lord Chancellor*

[H. 244, f. 65.]

WHITEHALL, June 6 [? June 7], 1753.

MY LORD,

The sincere attachment I have to your Lordship's person and interest, and the great obligations I owe you on many occasions, prevents my keeping silence; therefore must take this method to congratulate your Lordship and my country on the passing of a bill, which every good man has long wished for and which hitherto factions and interested persons have been too strong for, I mean that for preventing clandestine marriages, which this country of boasted liberty has hitherto wanted....It will be one of the most distinguished actions of the present era, and after ages will be surprised to hear that any opposition was given to it in this, but a great deal more, when they are informed of the licentiousness of that opposition it met with. By the indulgence of the Houses of Parliament to strangers, I was present at all the debates....Your Lordship's speech in the House of Lords yesterday, I had the very good fortune to hear; permit me most humbly to declare my opinion that 'twas one of the finest performances I ever heard in Parliament. You did justice to yourself and your friends, and set in a clear light that shame, which unprovoked enemies had brought on themselves, and most justly deserved; may you ever triumph over the united force of envy and malice (constant followers of true greatness and distinguished merit)....

THOS: ROBINSON.

*Duke of Newcastle to the Lord Chancellor*

[H. 65, f. 210.]

KENSINGTON, June 8, 1753.

MY DEAREST LORD,

It is with as much surprise as satisfaction that I can acquaint you that, finding Lord Holderness in the Closet, his Majesty began with a great good smile upon me, "Lord Holderness has just told me the particulars of Lord Chancellor's speech,"—which he approved most highly; he seemed particularly pleased with some *touching expressions*, and said afterwards a most right and just thing. I explained your Lordship's reasons, particularly with regard to the insult upon Law and the observation you made upon His Majesty as Head of the Law and Constitution. The King said, that was very right, for at Hanover where the government is *military*, as it is here *legal*, whoever struck a sentinel,

<sup>1</sup> The Murray and Stone affair is probably meant. (See p. 47.)

struck him the King. This was strong indeed. I told the King, and Lord Holderness confirmed it, that all which your Lordship had said upon the Laws was upon that principle. This remark, or rather application, of His Majesty's showed how well he approved and understood the whole. The King said his family came to preserve the Laws and were therefore to maintain them, implying from interest and obligation. I told your Lordship what effect your speech would have and, believe me, I have some knowledge of *things* and *men*. I told him the story of Pulteney, Yorke and Talbot<sup>1</sup>. I told him the quotation out of Quintilian, *Impudentiae resistendum est*. You may see how happy this has made me; I look upon your Lordship as part of myself, *Utrumque nostrum incredibili modo, Consentit astrum*<sup>2</sup>....I am, my dearest Lord, ever and most cordially yours

HOLLES NEWCASTLE.

*Col. the Hon. Joseph Yorke to his cousin, Hugh Valence Jones,  
secretary to the Duke of Newcastle*

[H. 84, f. 90.]

HAGUE, June 8, 1753.

...The marriage Bill passing by so great a majority is a proof that the opposition formed to it, and the manner of opposing it, has not been so much approved, as those who set it on foot at first hoped. Mr Fox's behaviour unprovoked, and in a matter of such general importance, has not raised my esteem for him, exclusive of the interest I naturally must have in everything that is personal to my Father. It would not have come with a good grace from anybody else in this case, but circumstanced as he is, it becomes him less than another to proclaim war. I take it for granted, that his endeavouring to come off with some flattery, is owing to the little applause he has met with out of doors for his behaviour within; for, thank God! all the dirt he can throw upon that Person will never stick, though it may bespatter himself...

*Right Hon. Henry Pelham to the Lord Chancellor*

[H. 75, f. 160.]

ESHER PLACE, June 10th, 1753.

...You will give me leave to assure your Lordship no one more seriously rejoices at the reception your conduct in the House of Lords, on a late occasion, meets with from all quarters, and particularly, as your letter and my brother this morning has informed me, at Kensington. I never doubted but when Lord Chancellor undertook the defence of his own honour or that of any of his friends, he would do it with ability, dignity and authority; all which, I am assured, were thoroughly maintained in your late performance. I hope it will be a means of putting an end to the mad conduct which has occasioned it...

<sup>1</sup> The allusion unfortunately cannot now be explained.

<sup>2</sup> Horace, *Odes*, ii. 17, 22.

*Hon. Philip Yorke to the Rev. Thos. Birch*

[H. 50, f. 116.]

WREST, June 12th, 1753.

DEAR BIRCH,

I am much obliged to you for the particular account, which your letter of the 9th<sup>1</sup> gave me, of my Lord's Philippic (for so it may be called) in the House of Lords. It must have made a great noise in the Town; and I should be glad to know what the sentiments of people are about it, and whether the generality do not think he was justly provoked to shew his resentment of the treatment he had met with. My brother says your relation is a very good one, but that you have mistaken the turn of the speech in one place, which he will tell you of when he sees you in town.... Mr Fox will have time to cool between this and next session, and if he is wise, he will draw some useful hints for his own conduct out of this transaction. No man can think it just that a subject of this kind, where the public alone was concerned, should be turned into a personal attack; and one must be very ignorant of the present state of the court not to see that, tho' the Chancellor was made the butt, the two brothers were really struck at, and *he* was to be run down for adhering to them....

[In a letter of June 16, 1753 (H. 50, f. 118), Birch speaks of the Chancellor's speech as] admired by every impartial person who heard it, but misremembered by some, and misrepresented by others, as a passionate invective against the House of Commons in general.

*Earl of Breadalbane<sup>2</sup> to the Lord Chancellor*

[H. 102, f. 235.]

June 30, 1753.

...The manner of opposing the Marriage Bill in the House of Commons was the subject of a great deal of conversation at Edinburgh, and I had the satisfaction of hearing Mr Fox's behaviour universally blamed. Justice is done to your Lordship's merit in this country, and even if 'tis possible to be partial where you are concerned, the people here in general are so. Surely such a bare-faced personal attack must carry shame with it....

<sup>1</sup> Missing from the MSS.; printed in *Parl. Hist.* at length, xv. 84. See above, p. 67.

<sup>2</sup> Lord Glenorchy had become Earl of Breadalbane by the death of his father, on February 23, 1752.

*Draft of a Letter written by the Lord Chancellor to be sent by Lord Holderness to the Lord Chancellor of Ireland upon the Earl of Kildare's Memorial*

[H. 244, f. 85.]

WHITEHALL, June, 1753<sup>1</sup>.

MY LORD,

I have the King's commands to transmit to your Lordship the inclosed copy of a paper, which has been presented to his Majesty by the Earl of Kildare, containing an account of supposed discontents and divisions amongst his Majesty's faithful subjects in Ireland, and ascribing the causes thereof to the conduct of the Lord Lieutenant and of those in whom his Excellency, for the better carrying on of his Majesty's affairs, places a confidence; and all this is represented as the sentiments of a great part of the House of Commons of Ireland and of many others, the most zealous of the King's Protestant subjects there. On the perusal of so uncommon and extraordinary an application, his Majesty expressed his great surprize; and has directed me to acquaint your Lordship that his Majesty has the firmest reliance on the duty and inviolable attachment of his Protestant subjects of Ireland to his sacred Person, Royal Family and Government, being thoroughly persuaded that their loyalty and zeal for his service are not to be shaken by any insinuations or misconstructions whatsoever. The King has had so great experience of the abilities and fidelity of the Duke of Dorset, in the several important trusts which have been reposed in him, and particularly by the great satisfaction which a seven years administration in Ireland had formerly given, not only to his Majesty, but also to his faithful subjects there, that his Majesty judged that, by appointing his Grace a second time to the important station of Lord Lieutenant, he gave no small proof of his attention and regard to their interest and welfare, which his Majesty has, and always will have, at heart. In this light his Majesty looks upon his Grace as deserving his support, without which his service cannot be carried on. The King's ear will always be open to receive any just complaint of any of his subjects; but his Majesty thinks it does not belong to any particular person, how respectable soever, to speak in the name of a great body of his People, much less of one of his Houses of Parliament, and to put an interpretation upon their proceedings and resolutions, which they have not thought fit to express. The King is determined to

<sup>1</sup> See p. 50.

continue his royal protection and countenance to all his faithful servants and subjects in Ireland; but his Majesty, and under him, his Chief Governor of that Kingdom, are, and ought to be, the proper judges by what persons, and through what channel, his royal favours are to be dispensed.

It is his Majesty's pleasure that your Lordship should communicate this letter to the Earl of Kildare, and to such other persons as you shall think proper and expedient. Your Lordship will observe how little impression representations of this nature make on the King's greatness of mind against daily proofs of fidelity and zeal in his service; and the duty and attachment and good affections of his Majesty's faithful commons of Ireland, and of the rest of his loyal Protestant subjects there, have been so truly and amply laid before the King by the Duke of Dorset, that they did not stand in need of any further endorsement. Upon the whole, his Majesty depends upon the cheerful concurrence of all his good subjects of that Kingdom to support his Government, and render it easy and happy in those hands, in which His Majesty has, for the justest reasons, been pleased to entrust it.

*Col. the Hon. Joseph Yorke to the Hon. Philip Yorke*

[H. 15, f. 331.]

HAGUE, *July 3rd*, 1753.

DEAR BROTHER,

Your obliging account<sup>1</sup> of what had passed between the contending powers in the affair of the marriage...was not less agreeable for being a little late, because it contained some particulars which I had not seen in other accounts. What related to Charles's speech in particular was new to me, and gave me great pleasure, as well from the substance as the spirit of it, for I was tired of hearing so much barking without a little biting. The world reasons much upon the present quietness, which I ascribe to my Lord's usual moderation and candour, which has not made him push a man further than the wall, though, indeed he does not deserve it at his hands, after his late behaviour....

<sup>1</sup> Not amongst the MSS.

*The Lord Chancellor to the Right Rev. Thomas Secker, Bishop of Oxford, in answer to a letter from the Bishop relating the clamours and discontent aroused by the Jew Bill in his diocese.* [H. 244, f. 84]

[H. 244, f. 93.]

POWIS HOUSE, July 3, 1753.

MY LORD,

I ask your pardon and am sensible I stand in need of much excuse for not sooner having acknowledged the honour of your Lordship's letter, which nothing but my constant engagements should have prevented. I am very sensible that a handle is taken for clamour from the act passed the last session relating to the Jews. It began in this town, in order to hurt a particular gentleman who serves for the City of London, and has since been industriously propagated in the country with the same view, I mean the approaching elections. That is an occasion upon which all kinds of weapons are taken up, and ill-grounded clamour is one of the readiest, but such a one, as it is the duty of every honest man to oppose and disappoint. Your Lordship has acted a very worthy part in endeavouring to undeceive your clergy in your visitation, and I make no doubt but you will continue to exert yourself in the same way. It is really surprizing that any man of good understandings and dispositions should fall into this snare. They certainly must have taken up their original prejudices before they knew what the Bill was, and some of them may possibly be unwilling to own their mistake. Your Lordship knows very well that no one Jew in the world is naturalized by this act, and that it only puts it into the power of the legislature to receive Bills hereafter for naturalizing particular Jews by name, which the Parliament may refuse or grant in such measure, and upon such conditions as they, in consideration of the particular persons and the circumstances of each case, shall think fit. Not knowing whether your Lordship has the printed act, I have taken the liberty to enclose one.

As to the few points on which your Lordship desires to be enabled to give some further satisfaction, the first is, whether Jews born in England had, before this act passed, a right to purchase lands.

If they had not, this law does not give it them, for it has no relation to Jews born here. But not to rest upon that, it is certain that some of the old Law Books say they had not such a capacity, and my Lord Coke is very strong upon this head. But it is as

certain that in modern times the greatest lawyers have been of a contrary opinion, and have held the rule, which Lord Coke lays down, or rather made, viz. *Infidi perpetui hostes*, to be absurd<sup>1</sup>. I am old enough to remember that when the act of the 10th of the late King (to which your Lordship refers for another purpose) was under consideration<sup>2</sup>, the opinions of all the great men at the Bar were taken, and in general they concurred that they were capable. Dr Tovey's<sup>3</sup> discovery was not then made. I have on this occasion looked into the book, which is a very incorrect work. I am convinced that the MS. which he found is apocryphal and of no authority. It is neither in print nor upon the Statute Roll. I cannot find that any Parliament was held in that year, the 54 Hen. 3, and the Parliament of Marlebridge al[ia]s Marlebrough, which was held 52 Hen. 3, has always been taken to be the last of his reign<sup>4</sup>. On the face of the instrument it does not import to be an act of Parliament; for tho' the form of them differ, I know of none that run in that style viz. *de consilio proelatorū magnatū et procerū qui sunt de consilio nostro*, which is a description either of the King's privy council or of the *magnū consiliū Regis*; for in those days it was frequent for the King to hold assemblies of certain great prelates and lords, who took upon them to make ordinances, but these ordinances had no proper parliamentary authority. These assemblies were called *Magnū Consiliū Regis*. This instrument concludes in the form of letters patents and with *teste meipso*, importing it to be under the Great Seal which, tho' particular grants passed in Parliament sometimes were, general laws were not; and though the Doctor represents this as an instance of the ancient method of proclaiming acts of Parliament, which my Lord Coke so much applauds, he is mistaken in that also; for the method was to send transcripts of the acts, passed in the preceding session, to the sheriff of every county in England, under a writ *quod proclamari faciat* throughout his whole bailiwick. Whereas this apocryphal statute of the Doctor's has a general direction to *all sheriffs, bailiffs and liegemen whatsoever*, which shows it rather (if real) to have been a proclamation founded on the ordinance of

<sup>1</sup> *Rep.* vii. Calvin's case, 17 a, b.

<sup>2</sup> 10 George I, c. 4.

<sup>3</sup> De Blossiers Tovey (1692-1745), Principal of New Hall, Oxford, author of *Anglia Judaica* (1738). The discovery was a supposed Act of Parliament from a MS. in the Bodleian forbidding the Jews to purchase or even hold lands, p. 187.

<sup>4</sup> Cf. Stubbs, *Cons. Hist.* (1880), ii. 106. "Two or three parliaments were held in 1270 to complete the taxation of 1269..." and who mentions one of 1271; see also H. S. Q. Henriques, *The Jews and the English Law*, 192.



Council. To this I will only add that, if this instrument was really an act of Parliament, it is incredible that neither my Lord Coke, Mr Selden nor any other lawyer or antiquary, who has treated of that subject, should have taken [no] notice of it. This negative argument appears to me to be of no small weight.

As to the supposed banishment of the Jews in the reign of Edward I, no such act of banishment appears, and my Lord Coke affirms none ever passed, but that they were banished consequentially by the abolition of usury, tho' Mr Prynne<sup>1</sup> maintains the contrary. Their return into England was in Cromwell's time. King Charles the 2d found them here at the Restoration and, notwithstanding the zeal of those times in Church matters, that Government, instead of expelling them, did, from principles of policy, encourage them to stay. It is true that no act of the legislature passed for that purpose, but authoritative and judicial notice was taken of them. Then it was allowed by the opinion of all the judges that they should be sworn in all Courts of Justice upon the Pentateuch; and my Lord Chief Justice Hale, as great a lawyer and as good a Christian as this nation ever produced, was the chief promoter of that practice, which has prevailed ever since.

As to the objection that a proviso should have been added, that Jews born in Great Britain should be incapable to sit in Parliament or vote for members of Parliament, the first observation that occurs is, that it is foreign to the subject matter of this Bill, which does not meddle with Jews, who are natural born subjects and remain on the foot of former laws.

But to answer this more particularly; I apprehend that if they are capable of purchasing freeholds, they are capable of giving votes incident to those freeholds. As to sitting in Parliament, 'tis an extravagant, strained objection, and may be as well supposed of Mahometans or of Gentous, or any other Heathens.

But there is a plain legal answer to it; for no man can sit in Parliament without taking the Oath of Abjuration after the Speaker is chosen. Now the Act 10 George I [c. 4] enables the Jews to take the Abjuration Oath, leaving out the words *upon the true faith of a Christian*, only in cases where they should present themselves to be sworn in pursuance of that act and the recited act 9 George I, *i.e.* for the purposes of these acts. Therefore,

<sup>1</sup> William Prynne, the well-known Puritan writer (1600-1669), had published on the occasion of the proposed re-admission of the Jews to England *A Short Demurrer to the Jews* in 1656.

if any borough should be so anti-Christian as to elect a Jew, he must take the Abjuration Oath *upon the true faith of a Christian*. If anybody should reply, that some Jews may submit to this, the answer is, you may suppose hypocrisy and dissimulation in any case. You may suppose that a Papist may take the oath of supremacy and the declaration against transubstantiation, or that any infidel may take all kinds of tests. But this is the fault of man's depravity and not of the law. Would these objectors require a sacramental test to qualify men for sitting in Parliament? That never has been attempted, and I believe never will; nor, upon the supposition of such gross prevarication with God and man, would any security be attained by it.

To return to the case of Jews born in foreign countries, I question whether there will be many instances of naturalization under this new act. The objectors don't consider that it has been a common practice since the Restoration to make Jews denizens by Letters Patents of the Crown. There are upon record instances of 20, 30 or 40 Jews made denizens together in one grant. By being made denizens they acquire all rights of natural born subjects accruing from that time, but a denization by Letters Patents has no retrospect and doth not give them entire civil blood. By virtue of *denization* they may purchase, and their children born here afterwards may inherit to them, and so on to all generations in the descending line. But they can't inherit to collateral relations; because in order to that they must derive their descent from some common ancestor, which is a retrospect, and presumes a capacity antecedent to the denization. Your Lordship sees that the whole they will gain by naturalization, beyond what they might have by denization, is a capacity of inheriting amongst themselves and some further small advantages in trade.

I have not had time to look into the laws or customs of France concerning the Jews, but am assured they are very extensive and not so local as is represented.

The case of Holland is very well known, and I have seen a letter from one of the ablest and most considerable men in that country, expressing an astonishment that such a clamour should be raised in England against so innocent, and as he thinks, useful a provision....

[An answer from the Bishop, f. 102.]

*Horace Walpole (the elder) to the Hon. Philip Yorke*

[H. 258, f. 73.]

WOOLVERTON, July 7, 1753.

...I could not forbear showing my zeal and attention last sessions in behalf of that great man, whose character and behaviour in private life is most unexceptionable and engaging to all that have the honour of being particularly acquainted with him, and who has maintained his high station for so many years with the greatest dignity, justice, ability and temper, to the satisfaction of all persons and parties, and whom I shall always consider as one of the greatest supports of the present happy constitution.

Upon this principle, I could not forbear expressing my uneasiness, and even resentment, to all my friends in the House at the unaccountable sallies of severe wit and disrespect of a certain person, without the least provocation, towards the first minister of state, who I daresay never offended him, and who could have no other view or intention than the service of the public in promoting in another place the bill in question; nay, I did not conceal my dislike at such a violent proceeding to the great orator himself, tho' I have always lived in friendship with him; and I am extremely glad to hear that he met at last with such a reception in a certain place; it was no more than his unjustifiable conduct deserved, and nothing less could be done in justice to the unworthily injured. Had the sentiments of the Closet been known sooner, it might have prevented, as you rightly observe, that disagreeable scene in the House!...

*Rev. Thos. Birch to the Hon. Philip Yorke*

[H. 50, f. 145.]

LONDON, Aug. 11th, 1753.

DEAR SIR,

Amidst the inexhaustible torrent of ribaldry against the Jews Bill, which daily overflows us from the press, one of the very few pieces on the other side appeared yesterday in the *Public Advertiser*. It is probably Mr Fielding's, both from the manner of writing and his share in the paper in general. It is in the form of a letter to a friend, who desired to know what was the true meaning of the term *naturalization*; and the answer shows first what a naturalization bill *is not*, and then what *it is*. I hope the *Whitehall*, or *General Evening* will spread it through the nation in order to counteract the malice of their rival the *London Evening*, which on Thursday inserted the instructions of the sheriff and grand jury of Wiltshire to their members to attempt the repeal of that bill, drawn up with all the virulence and absurdity which

<sup>1</sup> "During the contest in the House of Commons it was whispered about, with some industry, that His Majesty was displeased both with the Bill and the keeping the Parliament sitting for it, but we were soon undeceived and strong indications given to the contrary." Ord to Lord Carlisle, *Hist. MSS. Comm.*, Earl of Carlisle, 206.

a Jacobite country divine (for such the writer seems) can furnish upon such a topic. This example will, I am afraid, be followed by other places, which may render the affair more serious than I at first thought it. At Lewes in Sussex the Archbishop's universal reputation could not protect him from the cry of *No Jews*, which, his Grace observed, gave him no other concern than as a melancholy proof, how far the people are sunk back in reason and charity, in which they were before imagined to have made some advances....

*Rev. Thos. Birch to the Hon. Philip Yorke*

[H. 50, f. 158.]

LONDON, Sept. 8, 1753.

...The Duke of Marlborough declares that the Jews Bill has not lost him above one vote, but that the loss of this one vote has surprised him more than that of an hundred others would have done. It is that of Mr Benj. Holloway<sup>1</sup>, the minister of Woodstock, an enthusiastic Hutchinsonian, who owes his chief preferment to the Duke's family; and yet upon his Grace's sending him venison lately, returned him no other answer than that, if it was intended as a bribe, it would be lost upon him,...

*Hon. Philip Yorke to the Rev. Thos. Birch*

[H. 50, f. 168.]

WIMPOLE, Oct. 4, 1753.

DEAR BIRCH,

The domestic politics of this summer will make but a contemptible figure in history, which can record nothing else than the art employed by faction to swell a most inoffensive Bill into a national grievance, and the success with which the weak and the credulous have been deluded into the grossest of absurdities....The government will always be exposed to these popular gusts, as long as the corporation part of the city of London continues in the hands which rule it at present....I see the Common Council have instructed their representatives to obtain a repeal of the Jew Bill; and if such a motion should be made, it will be pretty difficult to withstand it, as many of the Whigs will be afraid of risking their elections just at the eve of a new representative. I consider our government in a state very near anarchical....

<sup>1</sup> Probably the elder B. Holloway (d. 1759), a religious controversialist, rector of Bladon near Woodstock 1736-9, when he handed over the living to his son of the same name; John Hutchinson (1674-1737), a religious symbolist and antagonist of Newton's theory of gravitation; author of *Moses's Principia*.

*Lord Chancellor to the Lord Chancellor of Ireland*

[H. 244, f. 258.]

POWIS HOUSE, Jan. 30, 1754.

MY LORD,...

I have been under the greatest anxiety for the uneasiness, which the present situation in Ireland must have given to my friend, the Duke of Dorset. I know his Grace's great honour and prudence, the moderation of his temper and his other virtues, formed to render the people, over whom he is placed, happy. I know also his sensibility of such undeserved ill usage. I have not troubled his Grace with letters, because in cases, where one is not master of the *carte du pays*, or of the dispositions, views and humours of the different parties and their leaders, especially in Ireland, which I have always been told differs widely in these respects from England, 'twould be presumption to advise. In the deliberations here, the principles I have acted upon are, to maintain the King's just prerogative, and the legal dependence of Ireland upon Great Britain, which I think essential to both nations, to support the credit weight and authority of my Lord Lieutenant, and to prevent any lasting divisions growing out of these difficulties amongst the Protestants of Ireland. My way of thinking has been that such measures as proceed from a combination of those principles must be right, and all others wrong<sup>1</sup>....

*Right Rev. Thomas Secker, Bishop of Oxford, to the Lord Chancellor*

[H. 244, f. 410.]

CUDDSDON, Aug. 30, 1754.

[Describes doubts that have been raised concerning certain points in the Marriage Act and proceeds:] Surprising pains are taken to keep up and increase ill humour in relation to it. Your Lordship, I presume, hath been informed that it was publicly arraigned and condemned by one Hawkins, son to Serjeant Hawkins, whom the Vice-Chancellor appointed preacher at the Assizes here; a man, from whom everything virulent was to be expected, and that the judges either thanked him, or at least expressed to him no sign of displeasure. But possibly you may not have heard of his affirming in the pulpit of me, by name, that I had on a late occasion, meaning my last years' visitation, told my clergy that persons, whose marriage was annulled by the Act, might with a good conscience cohabit; to which he added his own opinion that they were in conscience bound to do it\*....

<sup>1</sup> For other Irish correspondence see H. 244, ff. 169, 226, 233, 253, 264, 270-4, 319; H. 245, ff. 42, 54, 324, 336; H. 246, ff. 45, 364; N. 49, f. 3.

\* "N.B. Our Family may be said at this time to have been in their temporal

*Lord Chancellor to the Bishop of Oxford*

[H. 245, f. 1.]

WIMPOLE, Sept. 3, 1754.

MY DEAR LORD,

I received the honour of your Lordship's letter of the 30th of August, with much pleasure to hear of your health and that of the ladies. I cannot say that the enclosures gave me the same. Mr Archdeacon Sharpe appears again before your Lordship in a very questionable shape. I reverence his character, because I hear it is a very good one; but clearly he has a head to raise doubts. My great regard for your Lordship will induce me to tell you my thoughts, but it is upon these express conditions, that my name be never mentioned or hinted at, and that whatever you shall write to him be not in a positive or decisive way.

As to *Licenses*, which make the subject of all the Doctor's present doubts, the late Marriage Act has left the law relating to the power and manner of granting them just as it found it, except in one particular viz: that they shall be granted only to solemnize marriage in the parish church or public chapel of the parish or chapelry within which the place of abode of one of the parties shall have been for the space of four weeks, immediately before the granting of such license, etc.

The oath and bond required from surrogates is only a collateral circumstance, enjoined by way of further security to prevent abuses, but does not alter the rules of law concerning the instruments themselves.

The Doctor's first question, in the order of things, is, whether a surrogate is at liberty to refuse granting a license, when he is applied to by persons pleading great inconveniences, etc. As to this, I think that a surrogate is at liberty to refuse a license, because a license to marry without publication of banns is a dispensation with the general rules of law; and as a dispensation is not demandable *de jure*, I apprehend that no action will lie for denying it. This much is certain, that in sound discretion no ecclesiastical judge or surrogate ought to refuse licenses of this nature, without some legal objection, or reasonable ground of suspicion.

But upon the 2nd question, I apprehend that the minister to

*zenith*, of which the clamour raised about the Marriage Act is a proof; for in this country envy and abuse always attend power and prosperity. The *Decline* it has since had from various incidents is the lesson which Providence always holds out to us, that *Nihil mortale, —diuturnum.* H."

whom such license is directed and tendered, cannot refuse to solemnise the matrimony, unless it shall appear to him that one of the parties is under age and the consent of the parents or guardians not given, or that the usual place of abode of one of the parties has not been in his parish<sup>1</sup> for the space of four weeks immediately before the granting of the license. And since this Act has given a sanction to licenses equal to banns, I think an action may be maintained for refusing to solemnise the matrimony in any other case.

The 3rd question is, what is meant by the words *according to law* in the proviso relating to the oath and bond of surrogates?

The answer is, the law relating to licenses precedent to the Act, with the addition of the circumstances required by the Act, which I have already mentioned. That *precedent* law appears to me to be the canons of 1603[-4], which bind the clergy and the ecclesiastical courts and officers. But as to the qualification mentioned in Canon 101, *to such persons only as are of good style and quality*, I am very clear that the constant uniform usage of this kingdom, for granting licenses of marriage to persons of almost *any state or condition*, has put an altered exposition upon that canon, and that no surrogate can be judged to have acted contrary to law for granting licenses in like manner as they have been usually before granted in this respect.

As to the *customs* of particular dioceses or the special *directions of local ordinaries*, I am an utter stranger to them. *Custom*, I am sure, there can be none in this case to hold against the canons, which are the general law of the Church; and as to *special directions* of local ordinaries, if the Bishop or other local ordinary, who has power over his officers, has authoritatively given them any cautionary rules relating to the granting of licenses, I think the surrogates, or other officers, ought to observe them when signified to them.

The Doctor's doubt relating to blank licenses with the seal affixed to them, left with the country surrogates and filled up by them after they are so sealed, is a reasonable one<sup>2</sup>. I never understood that practice and always thought it irregular, and am sure it has been introductive of much abuse. But I am clear that no such

<sup>1</sup> "One of the parties has not been in the parish" is crossed out and the entire sentence in the text inserted instead. The word *usual* would seem to have some weight, and to exclude the artificial residence now frequently obtained and regarded as a sufficient qualification.

<sup>2</sup> See *More v. More*, 2 Atkyns 158.

surrogate could be punishable for forgery in filling up a license in this manner, for that the general usage would exempt the act from any fraud or evil intention, and be a sufficient ground to acquit him. But I would advise that the depositing of such blank licenses should be avoided as far as possible; though where it cannot be avoided, I should not be inclined to break in upon the established practice, at least at present, for reasons very prudently suggested by your Lordship in your letter<sup>1</sup>.

As to the question what is meant in the act by *persons having authority to grant licenses, or surrogates deputed by an ecclesiastical judge*, it was the intent of the act, and I think it is plain, that every person, who has a written deputation or appointment from any chancellor, vicar general, etc. to issue out licenses, is within that designation. The clause requiring the oath and security was particularly aimed at such persons, and unless they are within it, it would be nugatory.

I have now, for your Lordship's sake, gone through all Mr Archdeacon's queries; and as to those which he threatens to have in reserve, I hope these answers will help him to resolve them himself. If some difficulties are laid upon licenses in consequence of this act, I think there is no harm in it; for I always was of opinion, that the most desirable point of all was to induce the people of this country, as far as possible, to marry by banns; and therefore this new law has given certain advantages to that regular public method, established by the Rubric, which is part of the text of the Act of Uniformity. Indeed, it is wonderful how licenses came afterwards to be allowed.

I heard of the impertinence of Mr Hawkins before your letter. Surely there never was such a piece of impudence as quoting your Lordship on such an occasion and in such a manner, but you are quite in the right to despise it. If I had been judge of assize, instead of thanking him for his sermon, I should have been tempted to have begun my charge, as my Lord Chief Baron Smith<sup>2</sup> did once at Dorchester, after such an assize sermon, "Gentlemen of the Grand Jury, you have been very pragmatically told from the pulpit that etc.;" and yet my Lord Chief Baron Smith was as good a Churchman as any of his time.

As to a certain party, which your Lordship describes, I am sorry they have deceived your hopes, but am glad you now see them in

<sup>1</sup> Namely, to avoid giving occasion for fresh clamours against the Bill.

<sup>2</sup> John Smith (1657-1726), Lord Chief Baron of the Exchequer 1708.



their true colours. I have long seen *that spirit*; and great industry has been used to keep up *that spirit*, where you see the exertion of it, in order to hold out that place as the garrison and fortress of Toryism and Jacobitism<sup>1</sup>....

*Hon. John Yorke to Viscount Royston*<sup>2</sup>

[H. 26, f. 107.]

POWIS HOUSE, Nov. 1, 1754.

...You will be glad to be told that Dr Shebbeare, the author of that low novel, entitled the *Marriage Act*, has been obliged to give bail to appear before our Sovereign Lord etc: whenever it is thought proper to call him to an account. I hear it is so ill contrived, that scarcely one distress is described in the book, which might not just as well happen, if there was no such act. It is dedicated to the Duke of Bedford; and I think her Grace has reason to take it amiss that she is not celebrated in it as the patroness (I won't say of *female honour* but) of the *private liberty*, which this *wicked* law may perhaps help to *ruin*<sup>3</sup>....

Who do you think is going to be married? I don't believe even Lady Grey could guess. No less a man than Mr Pitt, and to whom? To no *less* a woman than Lady Hester Greenville. He talks of attending the House very diligently this winter, but *quo animo* is not very clear.

<sup>1</sup> The University of Oxford.

<sup>2</sup> The Chancellor having been created an earl, his eldest son was henceforth known by this title of courtesy.

<sup>3</sup> The Duke of Bedford was said to be hen-pecked.

## CHAPTER XXI

FAMILY HISTORY 1742-1754

THE termination of the prolonged and anxious negotiations for the peace, the final suppression of the Rebellion and the successful accomplishment of his reforms for Scotland, brought at last some respite to the Chancellor from the close attendance to affairs of state, which devolved upon him in addition to his duties as Speaker of the House of Lords, and to the extremely onerous business of his own great legal office in the Court of Chancery. In our own days the load of so much public business could not possibly be supported by one man. The enormous increase of office work, the fatiguing correspondence, and the endless circulation and annotation of papers, appropriate, together with speeches in Parliament and in the constituencies, the greater part of the time and energies of modern statesmen. Parliamentary and official routine were happily far less exacting and less engrossing in the eighteenth century, the necessity of appealing for popular support not so pressing; and the freedom from this great burden enabled a much larger amount relatively of administrative work to be accomplished; while at the same time the responsibility of the individual, who possessed none of the modern expedients for eluding it or shifting it to other shoulders, was far greater. Making, however, all due allowances for the difference of conditions, not only the responsibility exercised in so many spheres, but the actual attendance and drudgery of the Chancellor's various offices must, especially in these years, when his active influence was extended so far in domestic legislation and foreign policy, have been enormous. "The Duke of Newcastle," wrote Philip Yorke in 1748, "never had any mercy on my Father's time<sup>1</sup>," and the demands made upon his private leisure were incessant. Human strength and endurance are capable of wonderful

<sup>1</sup> H. 61, f. 156.

increase and expansion at the bidding of a strong will, and can respond to the most exacting demands at times of crisis and necessity, but they have their limit; and it was therefore with uncommon pleasure and a great sense of relief that the Chancellor found himself once more enabled to enjoy his vacations at Wimpole, where considerable improvements had been carried out, and where he now again gathered his family around him. It was a leisure, writes a friend of the family, "which should be held sacred by every Englishman<sup>1</sup>." "His Lordship," wrote the elder Horace Walpole, an old acquaintance, "being able to throw off the air of business with the gown of the magistrate is a happiness of temper that will contribute to preserve long such a state of health, as is so necessary for the service of the public, especially at this juncture, when I imagine that his great abilities may be more wanted than ever<sup>2</sup>." His constitution, as his sons inform us in the obituary article in the *Annual Register* of 1764<sup>3</sup>, was not naturally a strong one; "but his care to guard against any excesses...and his habitual mastery of his passions gave him a firmness and tranquillity of mind, unabated by the fatigues and anxieties of business," and left him with spirits vacant and disengaged, capable of enjoying his domestic life. His health was now restored by the needful rest, fresh air and exercise; and in September 1753 he tells his son Charles that he has ridden a race with Sir John Heathcote, on the old race-course on Empingham Heath, and beat him by his mare's length, "after having been Lord Chancellor of Great Britain near 17 years<sup>4</sup>."

The same year, on June 15, the Chancellor attended the University of Cambridge to receive the degree of LL.D., and replied to the compliment in a speech composed, as his son John relates, "while [Lord] Dupplin held him in discourse," and which gave universal pleasure, and was followed in the procession by his three sons, masters of arts<sup>5</sup>. No cloud appeared to dim the satisfaction with which the Chancellor regarded the happiness and advancement of his children, and the paternal affection and the pride which he felt in them were happily expressed in the following sonnet, addressed to him in 1746 by the poet and critic, Thomas Edwards<sup>6</sup>.

<sup>1</sup> Daniel Wray to P. Y., H. 53, f. 136.

<sup>2</sup> H. 258, f. 146.

<sup>3</sup> pp. 282 sqq.

<sup>4</sup> H. 5, f. 132.

<sup>5</sup> H. 26, f. 87; Add. MSS. 5852, f. 133.

<sup>6</sup> See note above, vol. i. 213.

O Thou, to sacred Themis' awful throne,  
 And the chief seat among the crowned peers,  
 The nation's last resort, in early years  
 Rais'd by thy high desert; not these alone,  
 Nor all the fame thy eloquence has won,  
 Though Britain's councils with success it steers,  
 And the rash Scot its distant thunder fears,  
 Rank thee so far above comparison,  
 As that prime bliss with which thy heart is warmed,  
 Those numerous pledges of thy nuptial bed,  
 Who back reflect a lustre on their sire;  
 Taught by thy lore, by thy example form'd,  
 With steady steps the ways of glory tread,  
 And to the palm of virtuous fame aspire<sup>1</sup>.

Charles, the most talented of all his children, had now definitely begun his legal career<sup>2</sup>. In 1744, at the age of 22, while only a student of Lincoln's Inn and before his call to the Bar, he had published his *Considerations on the Law of Forfeiture for High Treason*, which immediately attracted attention and reached subsequently five editions<sup>3</sup>. The heir of his Father's intellectual power, he nevertheless entered his profession with no light heart at first, literary pursuits having for him superior attractions to the routine and active practice of the law. Participation in politics and public life was equally distasteful. Writing to Warburton, in January 1744, he quotes Bacon's words, "I discern in me more of that disposition which qualifies to hold a book than to play a part." In 1752, a remark of the same kind to Montesquieu draws a remonstrance from the great French thinker, who points out the advantage and propriety of ambition in young men, reminds his correspondent of the superiority assigned by Cicero, himself a philosopher, to those engaged in public life over the mere thinkers, and urges him strongly to persevere in his illustrious profession<sup>4</sup>. Completely wanting in his Father's calm self-confidence and happy optimism, he was weighed down by a sense of responsibility, fearful of sinking beneath the great standard set up before him, and afraid of appearing unworthy of his

<sup>1</sup> J. Nichols, *Select Collection of Poems*, vi. 106.

<sup>2</sup> Above, vol. i. 208.

<sup>3</sup> See above, vol. i. 328. It has earned amongst others the enthusiastic praise of Lord Campbell (*Lives of the Chancellors*, 1846, v. 378). "Now, for the first time, appeared among us a writer, who rivalled the best productions of the French and German jurists," etc.

<sup>4</sup> *Selections from Unpublished Papers of W. Warburton*, by F. Kilvert (1841), 153.

<sup>5</sup> p. 177. George, afterwards first Lord Lyttelton, describes him to Warburton about this time as "a young gentleman of equal virtues and talents; the last he will improve by living more in the world." *Ib.* 206.

Father's example, rather than encouraged by it. With characteristic diffidence and depreciation of his own abilities he begged to be allowed further time for study and preparation before pleading in public; but the Chancellor overruled his objections and insisted upon his call to the Bar, which took place on February 4, 1746<sup>1</sup>. Once, however, embarked, he made rapid strides in his profession<sup>2</sup>. His great talents immediately triumphed over all obstacles and all misgivings. "Charles has very little regard for sub-legal affairs," writes Daniel Wray, an intimate friend of the family, a few months later on June 5, 1746, "having made a huge stride last week in Westminster Hall. He had, what he calls, an excellent hit, an opportunity of speaking upon a point with only the Attorney before him who, moreover, had by no means exhausted the subject with his usual copiousness. All people that heard Charles were extremely pleased, and his friends found something more taking in his manner than they expected<sup>3</sup>." A year after his call he was pleading in an important case before the House of Lords and his Father. "I can acquaint you with no little satisfaction," writes Philip to Col. Joseph Yorke on February 23, 1747, "that Charles has made his appearance in a cause before the Lords greatly to his credit. Everybody commends his pleading. It was material to the point in issue, handsomely worded and spoke with becoming assurance. My Lord was much pleased with it, and you know he is not flippant of his commendations<sup>4</sup>." "I rejoice at my brother's success," he writes later on July 9, 1751, "and cannot help wishing that he himself took a more hearty liking to a profession in which he will make so considerable a figure, if he perseveres in it<sup>5</sup>."

On December 7, 1747, he was returned to Parliament for Reigate, a family constituency<sup>6</sup>, in which he succeeded his elder brother,

<sup>1</sup> *Records of Lincoln's Inn*, Black Books, iii. 336. "The first practice into which I may naturally be thrown," he writes to his brother Philip on June 9, 1745, "will be that of the Court of Chancery where he presides, and I apprehend that I shall appear very ignorant and deficient." H. 12, f. 143; H. 37, ff. 39, 56; H. 56, f. 40; also H. 5, f. 5.

<sup>2</sup> According to entries in his fee-book, quoted by Harris (iii. 441) which is no longer to be found among the family papers, he appears to have made his way from small beginnings by slow and sure progress. During his first year at the Bar he only made £121, during the second £201. It was not till his seventh year (1752-3) that his fees approached £1000. In 1756 they were nearly £2500. In 1757 when Solicitor-General more than £3400, in 1758 over £5000, while in 1763 they amounted to £7322. *8s. 6d.*

<sup>3</sup> H. 53, f. 53.

<sup>4</sup> H. 15, f. 194.

<sup>5</sup> H. 50, f. 6; for Charles Yorke's cases and legal papers see H. 835-847, 849-850, 852-856, 860-867 and 873-878.

<sup>6</sup> The manor of Reigate had been given by King William III to Lord Chancellor Somers.

Philip, and which he continued to represent till 1768. His entrance into the House of Commons was celebrated in the following lines by Thomas Edwards :

Charles, whom thy country's voice applauding calls  
 To Philip's honourably vacant seat,  
 With modest pride the glorious summons meet,  
 And rise to fame within St Stephen's walls!  
 Not<sup>1</sup> mean the honour which thy youth befalls,  
 Thus early claim'd from thy lov'd learn'd retreat,  
 To guard those sacred rights which elevate  
 Britain's free sons above their neighbour thralls.  
 Let Britain, let admiring Europe see  
 In those bright parts, which, erst too long confin'd,  
 Shone in the circle of thy friends alone,  
 How sharp the spur of virtuous ancestry,  
 When kindred virtues fire the generous mind  
 Of Somers' nephew and of Hardwicke's son.

He took an active part in the proceedings of the House of Commons, where he spoke with weight and effect, and was heard with attention. He seconded the address in November 1748, and moved it in January 1753. "The figure Charles Yorke made," wrote Henry Etough to Birch on the first occasion, "is an agreeable piece of news. Nothing can be more pleasing than such accounts of young men, who have the additional character of probity and virtue<sup>2</sup>." In May 1748 he caused the rejection of a mischievous Bill for the security of the Protestant purchasers and trustees of the effects of papists<sup>3</sup>, and subsequently supported with great ability some of his Father's measures, in particular the Marriage Act of 1753. On this occasion, during a scene of great excitement, he warmly defended the Chancellor, repelled the audacious and insolent attacks made upon him by Henry Fox, and obtained great praise and applause<sup>4</sup>. In May 1751 he spoke in support of the Regency Bill, and in February 1754 on the extension of the Mutiny Act to India, a measure rendered necessary by the frequent warfare maintained between the forces of the East India Company and the French. The accounts of the debates, however, are at this time very scanty, and afford an exceedingly imperfect

<sup>1</sup> J. Nichols, *Select Collection of Poems*, vi. 106, which gives *nor* here, probably a misprint. See also the verses addressed to him by another poet, Hawkins Browne, in Dodsley's *Collection of Poems* (1775), ii. 287.

<sup>2</sup> Add. MSS. 4326 B, f. 21.

<sup>3</sup> "Your brother Charles...urged such a weight of objections, that the patrons of it, Lord Gage and Mr Fazakerley, abandoned it without any reply." Birch to P. Y., May 7, 1748; *Parl. Hist.* xiv. 267, 325, 1008, 1275 sqq., xv. 270; Sir R. Wolfe from Lincoln's Inn, May 12, *Erthig MSS.*

<sup>4</sup> See above, p. 65.

notion of his parliamentary activity. In 1746 he obtained the reversion of the office of Clerk of the Crown in Chancery, jointly with his brother John, according to Walpole, worth £1200 a year<sup>1</sup>, and on his younger brother receiving that of the Chaff Wax, he held it all. His Father had handed over to him the whole of his share of estate, which included landed property in Kent, and with his legal earnings he enjoyed now a considerable income<sup>2</sup>. On July 3, 1751, he received the important post of Counsel to the East India Company, upon the affairs of which he gave several opinions; and in 1754 he was elected a Bencher of Lincoln's Inn<sup>3</sup> and appointed Solicitor-General to the Prince of Wales, with a patent of precedence at the Bar.

These various public and professional duties almost excluded literary occupations, and little therefore remains from his pen beyond some occasional verses of considerable elegance<sup>4</sup>, and the *Athenian Letters* already mentioned<sup>5</sup>. He continued to correspond, amongst others, with Thomas Birch, Warburton and Montesquieu, whom he visited when at Paris. To the latter, who regarded the influence of the nobility as a beneficial curb to the autocratic power of the Crown, he explained the real reasons and nature of his Father's Scottish legislation<sup>6</sup>. He sometimes criticised Warburton's emendations of Shakespeare, and letters written by him at the age of 20 to Warburton show a maturity of judgment, wide reading and a clearness of thought unusual in so young a man, and include some passages which appear to contain unorthodox opinions on the state of guilt common to humanity and consequent to the Fall<sup>7</sup>. They are composed in a formal style, and often on controversies which have long been settled, or on topics which have ceased to interest; but they are distinguished in diction, in ideas and conception, and are instinct with the true feeling of the scholar and the man of culture<sup>8</sup>. Occasionally, he found time to

<sup>1</sup> *Letters* (1903), ii. 226.

<sup>2</sup> p. 179.

<sup>3</sup> *Black Books Lincoln's Inn*, iii. 356.

<sup>4</sup> The poem beginning "Strip to the naked Soul, escaped from Clay" ascribed to him was however written by Pope.

<sup>5</sup> vol. i. 207.

<sup>6</sup> p. 172; also Sir J. Dalrymple, *Essay towards a General History of Feudal Property* (1758), 246-7.

<sup>7</sup> *Selection from Unpublished Papers of W. Warburton*, ed. by Rev. F. Kilvert (1841), pp. 123-53; C. Y.'s letters in *Letters from an Eminent Prelate* (1st ed.), pp. 52, 72 etc., 216, 369; *Letters from Dr Warburton to the Hon. Charles Yorke* (1812); and Warburton's letters to him in Egerton MSS. (Brit. Mus.) 1952.

<sup>8</sup> See e.g. the interesting letter of April 10, 1742, probably to Warburton, in support of the genuineness of Cicero's letters to Brutus, which it was the fashion at that time to reject. H. 285, f. 66.

visit his friends, joining the genial and intellectual house-parties of the famous Ralph Allen, the friend of Pope and of Pitt, at Prior Park in Bath. In 1751 he became a Fellow of the Royal Society.

The large collection of the papers and correspondence of the great Lord Somers, of unique historical value, then at Bellbar, in the possession of Lady Jekyll, the widow of the late Master of the Rolls, sister of Lord Somers, and aunt of Lady Hardwicke, was a source of considerable interest to Charles Yorke; and in conjunction with his elder brother Philip, and with the aid of Thomas Birch, an able writer and historian and one experienced in this kind of work, an annotated selection seems to have been projected. Some progress appears to have been made in arranging the collection, and a rough catalogue was drawn up<sup>1</sup>. Subsequently the whole of the collection was removed to Charles Yorke's chambers at 10, New Square, Lincoln's Inn, where the process of sorting and digesting went on; and here, in the night of June 27, 1752, it was almost entirely consumed by a terrible fire, which broke out in the chambers beneath, and which destroyed in a few minutes this priceless record of a great man's career<sup>2</sup>. "It filled upwards of 60 volumes in 4to," states the second Lord Hardwicke, "and did not contain a paper from Lord Somers's pen, which the most intimate friend would have wished to secrete, or the bitterest enemy could have fairly turned to his prejudice<sup>3</sup>." The catastrophe created an intense alarm and panic, and the Chancellor was obliged to suspend his sittings owing to Lincoln's Inn Hall, where he generally heard causes, being filled with the effects which had been saved from the conflagration<sup>4</sup>. Charles Yorke, himself, barely escaped with his life, and took refuge barefooted in a friend's chambers opposite, from which he viewed the destruction of the precious manuscripts as well as of all his own books and legal collections. Subsequently he recovered some "fragments which the flames had spared and, after correcting the damaged portions with his own hand, bound up the valuable remains into a folio volume<sup>5</sup>." A selection of these, *immitis ignis reliquiae*, was published by his brother in the Hardwicke *Miscellaneous State*

<sup>1</sup> H. 12, f. 86 and H. 37, ff. 3, 5; H. 48, f. 262.

<sup>2</sup> pp. 178 sqq.; *Gent. Mag.* xxii. 287; *Letters from an Eminent Prelate*, 87, "our excellent friend, Mr C. Yorke, escaped narrowly with his life. This makes me think all the rest a trifle."

<sup>3</sup> Hardwicke *Miscellaneous State Papers*, ii. 399.

<sup>4</sup> *Records of Lincoln's Inn Black Books*, iii. 473.

<sup>5</sup> Hardwicke *Miscellaneous State Papers*, ii. 399; H. 50, ff. 62, 64.



*Papers* in 1778, and is enough to deepen our regret for the loss of the rest.

This calamity was deeply felt by Charles Yorke; and it was some time before he was able to regard his loss with equanimity. In May 1747 he had suffered from a severe illness, called by his father "a milliary fever," when his life was for some days in danger; and his health was subsequently affected by headaches, eye troubles and digestive disorders<sup>1</sup>. In 1749, and in later years, he took the waters at Spa but without any definite benefit. His younger and more robust brother, Col. Joseph Yorke, treated his brother's complaints as the effect of mere nerves and a despondent imagination; and recommended, in the manner of Molière, "un bon mariage," as a cure for all ills of this nature. The true cause, however, lay somewhat deeper. In one individual had been joined extraordinary and varied talents, which inevitably drew him into the full tide of public life, and at the same time a delicate physical constitution, and an excessive sensibility and habit of introspection which, acting and reacting upon one another, rendered him often inclined to morbid scruples, wanting in independent decision, and too pliable to outside influence on great and critical occasions. "His spirits," wrote the Chancellor to the Duke of Newcastle, "are not of the best and firmest kind<sup>2</sup>"; and the entire lack of his father's healthy optimism, calm judgment and strong self-reliance, was the tragedy of Charles Yorke's life. But this deficiency had its compensations; for his "softness of nature and the force of his domestic and natural affections," of which his friend Warburton speaks<sup>3</sup>, his sensibility, refinement of feeling and power of sympathy, drew the hearts and affections of all, with whom he came into contact, towards him; and there must have been something eminently lovable and engaging in a character which inspired such tributes of friendship and affection to his memory, as are so often found in the writings of his contemporaries, which, with their ardent enthusiasm, on the cold printed page of history, seem to us almost exaggerations<sup>4</sup>.

<sup>1</sup> pp. 160, 174; H. 5, f. 83. H. Walpole, writing on March 11, 1748, says that it had "taken off a great many people. It was scarce known till within these seven or eight years, but apparently increases every spring and autumn. They don't know how to treat it, but think they have discovered that bleeding is bad for it." *Letters*, ii. 304.

<sup>2</sup> p. 179.

<sup>3</sup> *Egerton MSS.* 1952, f. 62.

<sup>4</sup> *E.g.* those of Sir John Dalrymple of Cranstoun who dedicates his *Memoirs of Great Britain* (1790), to his memory, and had said in a letter to C. Y. that the latter had "since I came to London, this last time, taken me by the hand, when I was in absolute despair, and when no other person would." (H. 287, f. 246; see also ff. 241-4, 447); and of Francis Hargrave, the editor of Coke upon Littleton, and Warburton's letters

His elder brother Philip had something of the same want of physical vigour and ambition, incapacity for or dislike of public life, and of excessive introspection and caution. Col. Joseph Yorke deplored "so much prudence and good sense" as encumbrances, and as family failings. "There is one fundamental objection I make to everyone of the family including myself," he writes, "and that is that we all of us are too apt to overthink things. I admit that we may be involved by that means in fewer scrapes, but it prevents us at the same time from attempting things, where we should be as likely to succeed as others." This "cursed way of overthinking everything," he declares, "keeps us as lean as carrion<sup>1</sup>." In the case of Philip, unlike his brother Charles, a great marriage in early life, and an ample fortune with the prospect of succeeding to a great deal more, had, together with weak health, tended to foster his natural inclinations, and to withdraw him more and more from the great scene, and had enabled him to pursue occupations congenial to his temper, those of letters, those of the domestic sphere and of the country gentleman. He was a generous patron of letters, and possessing himself an extensive knowledge of history, he contributed to, or aided in, various productions, including the publications of Thomas Birch and Harte, the biographer of Gustavus Adolphus<sup>2</sup>. In later years he edited and published Sir D. Carleton's *Letters* (1757) and other works, and the Hardwicke *State Papers*, and is known as the well-informed and judicious annotator of Burnet. He gathered together a large and valuable collection of historical manuscripts, and Thomas Birch held a permanent commission to supply a periodical letter, containing literary information as well as public news<sup>3</sup>. The latter, who was greatly assisted by him in his historical publications, both with money and advice, dedicated to him *Sir Thomas Edmondes' Negotiations* in 1749 and other works; and the poet Edward Young inscribed to him the 4th Night of *Night Thoughts*<sup>4</sup>. He became a fellow of the Royal Society in 1741, and served on the council in 1753, 1755 and 1758. He was elected a fellow of the Society of

to him, *Egerton MSS.* (Brit. Mus.) 1952; also John Taylor, the classical scholar, in dedicating to him his Orations of Demosthenes and Lycurgus in 1743, "Ob singularem morum suavitatem et felicissimam in optimis literis culturam et in amicitiae et observantiae perpetuum argumentum."

<sup>1</sup> H. 8, f. 109.

<sup>2</sup> H. 50, f. 347; in H. 48, f. 127 there is a plan drawn up by him for a history of the Spanish invasion of 1588.

<sup>3</sup> H. 49, f. 247.

<sup>4</sup> See also H. 2, ff. 1 sqq.

Antiquaries in January 1744, became, together with his father, a trustee of the British Museum at its foundation<sup>1</sup>, and was granted the degree of LL.D. at Cambridge in 1749. Even William Cole, the Jacobite and Romanist antiquary, and a bitter enemy of the family in Cambridgeshire, calls him "learned and ingenious<sup>2</sup>." He was a man of high character and amiable virtues<sup>3</sup>, a trained politician, an acute observer and sound judge of events and men; and the state was no doubt a loser by his determined refusal to take that share in public life to which his abilities and opportunities frequently invited him. His brother Charles had addressed to him the following sonnet in 1743, to rouse his patriotism and ambition.

SONNET IN IMITATION OF MILTON.

Philip, well versed in the wily Maze  
Of subtle Politiques (whose busy Mind  
Hath fill'd the World with Discord, while their Praise  
Lives on each Tongue; for thus perverse Mankind  
Adore their Ills :) To take the Part why slow  
Which Nature, Art, and Fortune bid thee bear;  
Dost thou inglorious view the mortal Foe  
To Sensè, to Liberty its Crest uprear  
With blind but fatal Rage, misguided Zeal!  
The better Maxim for the Public Weal  
Is to prevent, not to redress, its Wrong;  
Join Sommers' Temper, Knowledge, Eloquence,  
To Lucas' Spirit; stem the Torrent strong,  
E'er Faction burst of Laws the sacred Fence<sup>4</sup>.

March 4<sup>th</sup>, 1743.

C. Y.

Notwithstanding, however, his decided inclination for a life of ease, study and retirement, amidst the delights of Wrest, Philip Yorke often took an active part in public affairs. He had been appointed, soon after his father's purchase of Wimpole, Lord Lieutenant of Cambridgeshire, an office which, owing to the new Militia Acts and the consequent popular opposition and riots, entailed considerable responsibility. In Parliament he often spoke with effect, though generally on formal occasions, while his attention to, and interest in, the proceedings of the House of Commons are shown by his

<sup>1</sup> H. 921, f. 57.

<sup>2</sup> Add. 5886, f. 20.

<sup>3</sup> See the ode to him by Soame Jenyns, whom Walpole calls sneeringly "the poet laureate of the Yorkes" (*George II*, ii. 140), beginning: "Thou, whom nor honours, wealth, nor youth can spoil," (Dodsley's *Collect. of Poems* (1775), iii. 175); and the verses of Thos. Edwards in the same sense. (*Canons of Criticism*, 1765, p. 313.)

<sup>4</sup> MS. at Wimpole; see also other odes of his composition in J. Nichols, *Select Collection of Poems*, vi. 297 sqq. and H. 48, f. 209-11.

parliamentary journal<sup>1</sup>. In 1747 he relinquished the family borough of Reigate to his brother, Charles, and was returned himself, with the support or acquiescence of all parties<sup>2</sup>, for Cambridgeshire, which he continued to represent, till he succeeded to his Father's peerage. He seconded the address of thanks in December 1743, supported the government on the vote for the British troops in Flanders in January 1744, moved the address in November 1744, and seconded the election of Speaker Onslow at the opening of the new Parliament in November 1747. He was one of the managers for the Commons at the trial of Lord Lovat, and later, in 1757, for the Newcastle government in defending their naval policy in the House of Commons after the loss of Minorca, while in December of the same year he moved the address<sup>3</sup>.

The advancement of the Chancellor's third son, Joseph, had been strikingly rapid. Able and ambitious, he had none of his elder brothers' excessive self-disparagement or want of self-confidence, and active and self-reliant he had, while still not much more than a youth, risen high in the army and become already a personage in diplomacy. We have already followed him in his successful military career to Dettingen, Fontenoy, Culloden and Lauffeld. In April 1743, he had been promoted from ensign to lieutenant in the Coldstream Guards<sup>4</sup>. He had served as aide-de-camp to Marshal Wade, and subsequently to the Duke of Cumberland through all the Prince's campaigns in Flanders and Scotland, and had won the affection and regard of his comrades and superiors. On May 27, 1745<sup>5</sup>, before he was one-and-twenty, he was promoted to a company in the Coldstream Guards, with the rank of lieutenant-colonel, for his conduct at the battle of Fontenoy. "Without any compliment to your Lordship," wrote Lord Albemarle, his colonel, to the Chancellor, "he always behaved in such a manner, and particularly at the Battle of Fontenoy, that he justly deserves the favour of our brave young General, and the love and esteem of us all<sup>6</sup>." His good humour, good comradeship and geniality dispersed the envy and jealousy, which the favour shown to him and his rapid promotion would naturally excite. On November 1, 1749, he was made aide-de-camp to the King as a reward for further services<sup>7</sup>,

<sup>1</sup> See vol. i. 211.

<sup>2</sup> H. 241, f. 260; p. 161.

<sup>3</sup> *Parl. Hist.* xiii. 135, 150, 389, 986, xiv. 89, xv. 832; *State Trials*, xviii. 695.

<sup>4</sup> See vol. i. 292; *Hist. MSS. Comm.*, Mrs Frankland-Russell-Astley, 237.

<sup>5</sup> *Ib.* 409 sqq.; see below, p. 169 and vol. i. 411.

<sup>6</sup> H. 6, f. 133.

<sup>7</sup> pp. 91, 169-172.

on which event he observes candidly, "I am sorry for his [another candidate, Lord Cathcart's] disappointment, but I should have been much sorrier for my own<sup>1</sup>." In March 1755 he was appointed colonel of the 9th Regiment of Foot Guards.

The last stages of the war in the Netherlands had not been encouraging to military ambition, and expectations of military glory sank to their lowest ebb. "Married men," he writes to Colonel Russell, "that live happily at home with their wives, may be congratulated on the approaching peace; young bachelors, whose fortunes are to make, should be condoled with<sup>2</sup>." Accordingly, on the conclusion of the Treaty, in October 1748, despairing of further progress in the army, he entered with some eagerness into a project of engaging in diplomacy and of undertaking a mission to Paris, desired by the Duke of Newcastle, whose aim in this appointment, it may be surmised, was to secure some one through whom he could control the policy and negotiations in that part of the scene<sup>3</sup>. As the Duke of Cumberland's secretary and aide-de-camp, he had already shown uncommon ability in the conduct of political correspondence and in the writing of state papers, and had been dispatched by the Duke on several important missions, which he had managed with tact and success<sup>4</sup>.

At the beginning of 1749, therefore, though a mere boy of twenty-four, he was appointed secretary of the embassy in Paris; and for some time represented British interests alone in the capital of the hereditary enemy, retaining, even after the arrival of Lord Albemarle, the ambassador, who paid little attention to the duties of his office<sup>5</sup>, the real direction of affairs<sup>6</sup>. In May 1751, Lord Chesterfield wrote to his son: "Mr Yorke is by this time at Paris. Make your court to him, but not so as to disgust in the least Lord Albemarle, who may possibly dislike your considering Mr Yorke as the man of business, and him only *pour orner la scène*<sup>7</sup>. The chief subjects of diplomatic controversy, in which he found himself engaged, were the delay of the French in evacuating the islands in the West Indies and in settling the frontier disputes in Canada, their intrigues to gain the Northern Powers, and the appointment in 1751 of George

<sup>1</sup> H. 7, f. 141-3.

<sup>2</sup> *Hist. MSS. Comm.*, Mrs Frankland-Russell-Astley, 410.

<sup>3</sup> H. 6, f. 412.

<sup>4</sup> vol. i. 650, 652.

<sup>5</sup> Walpole's *George II*, i. 82.

<sup>6</sup> *Bedford Corresp.* i. 594. His instructions, N. 131, f. 44.

<sup>7</sup> *Letters* (1892), i. 433.

Keith, Earl Marischal, a Jacobite and refugee, as Prussian ambassador at the French court, while at the same time Tyrconnel represented France at Berlin<sup>1</sup>. In spite of his youth and inexperience, he applied himself with great industry to his new duties and conducted himself with ability, tact and firmness<sup>2</sup>. He had a natural talent for diplomacy, a sharp insight into the characters and aims of persons and the trend of events, the power of keeping his own secrets and of discovering those of others, and a prudence and caution, joined to a quiet and persistent perseverance, which were masked by a seeming frankness and audacity. He knew well how to keep up the dignity of his office, and earned the highest recognition and compliment a statesman or an ambassador can receive, the abuse of the enemies of his country. "On nous a envoyé ici," writes D'Argenson, "comme chargé des affaires, un Colonel York, qui est un des [? plus] insolents, un des [? plus] impertinents petits coquins d'Anglais que nous ayons possédés encore"; and again a little later complains: "Le Colonel York... ayant entendu dire, à Fontainebleau, que le roi aurait l'été prochain quarante vaisseaux de ligne, il a répondu tout haut que si cela devait être, le roi d'Angleterre l'empêcherait bien<sup>3</sup>."

In the meantime, while attending with great prudence and diligence to his official duties and correspondence, he had become exceedingly popular, both among his own countrymen at Paris and in French society. "Lord Albemarle," writes Lady Featherstonhaugh, "is not yet returned...; but Colonel Yorke is here, and from him we receive great civilities. We live much with him, and he is very agreeable<sup>4</sup>." He took up his residence at first at the Hotel d'Anspach, rue Jacob, and later in the same year in the Rue Colombier, Faubourg St Germain<sup>5</sup>. In his gay, brilliant manner he quickly picked up the French language and French fashions, and amused and enjoyed himself, always preserving, however, the proper sense of British superiority<sup>6</sup>. He made Voltaire's acquaintance<sup>7</sup>, and basked in the smiles of M<sup>me</sup> de Pompadour, whom, at his first visit, he had the satisfaction to see "tremble" at his approach, though whether from love at first sight of the gallant young British colonel, or from fear

<sup>1</sup> Above, p. 7; Coxe's *Pelham*, ii. 195.

<sup>2</sup> pp. 165 sqq.; *Bedford Corresp.* ii. 3 sqq. for correspondence, and approval of his conduct.

<sup>3</sup> *Journal et Mém. du Marquis d'Argenson* (1863), v. 421, vi. 56.

<sup>4</sup> *Memorials of Lord Gambier*, by Lady Chatterton, i. 51.

<sup>5</sup> H. 7, f. 122.

<sup>6</sup> H. 39, f. 93.

<sup>7</sup> H. 15, ff. 266, 270.

of the representative of British might and power, we are not informed<sup>1</sup>. In person, Joseph Yorke was little, with well-formed and regular features, and a gayer and more attractive countenance than either of his two elder brothers. His success and happy disposition increased a vanity, which was, however, too boyish and innocent to be displeasing. He had no false modesty about him, and he tells his sister, Lady Anson, that Lord Anson had called him "the most impudent fellow he ever saw, and for that reason fit for a foreign minister<sup>2</sup>." He took a less serious view of life than his brothers, and his correspondence supplies the element of lightheartedness and animation which is often wanting in theirs. There is much in his letters, however, of a more serious vein. He gives a vivid and accurate description of the state of the French court and nation. He writes much concerning the struggle between the crown and the clergy, the distress and ill-treatment of the people and their frequent frenzied outbreaks against their oppressors; and the distant, but deep note of the coming revolution is continually sounding in his correspondence. One of the benefits of the conclusion of the Peace had been the reopening of social intercourse between the two countries. The grand tours were now resumed by the young Englishmen of fashion, and in 1749 Philip and Charles paid a visit to Joseph at Paris. Parisian society and gaiety, however, made far less impression upon them than upon their younger brother. The more staid Philip, in particular, felt out of touch with his surroundings; he was bored and fatigued by the society and the entertainments to which his brother introduced him<sup>3</sup>, and returned to London more convinced than ever of the superiority of the English race, manners and constitution.

In the autumn of 1751, Col. Joseph Yorke left Paris for Hanover, where he was well received by the King, with whom he was a favourite. "The Colonel," writes his brother, John Yorke to Philip, on October 26, 1751, "has already had two audiences of his master of three quarters of an hour each time, and walked up and down the closet like a great minister the whole time<sup>4</sup>."

In December, 1751, he was appointed British minister at the Hague<sup>5</sup>. Here he took up a post of great difficulty and responsibility, which required considerable diplomatic ability, tact and patience. "In the present situation of affairs, in the United

<sup>1</sup> H. 39, f. 125.

<sup>3</sup> H. 39, f. 141.

<sup>2</sup> H. 40, f. 100.

<sup>4</sup> H. 26, f. 77, and H. 99, f. 3.

<sup>5</sup> N. 147, f. 128, account of his first reception; and pp. 31, 174.

Provinces and at St James's," wrote Lord Chesterfield, referring no doubt to the exposed situation of Holland to the encroachment of France, the jealousies which divided Holland from Great Britain and the estrangement which separated the King from his daughter the Princess of Orange, "that of an English minister at the Hague is not to be envied, *elle sera scabreuse*<sup>1</sup>." The services he rendered now to the government, though not always rewarded with complete success, were of the very highest value. He very soon became a *persona grata* with the Princess Royal, a person of intractable and undependable character, who, upon the death of the Prince of Orange and during the minority of her son, carried on the government as Regent of the States; and he employed his influence usefully in maintaining British ascendancy, in spite of great obstacles, in the country, and in opposing French intrigues and encroachments. "À juger de son caractère," wrote Burghermaster Hop, in an intercepted letter, "et de sa manière de faire, il imite fort l'exemple de Lord Strafford<sup>2</sup>, qui fut employé ici au tems du Congrès d'Utrecht, fort fier et avec force de hauteur, s'appuyant sur l'appuy de Madame la Gouvernante<sup>3</sup>." "Mr Yorke," wrote his antagonist D'Affry, the French Ambassador at the Hague, of him to the Duc de Choiseul in 1759, "a la réputation d'un galant homme, et je crois qu'il la mérite.... Il est avantageux, très vif et sujet à des fougues dont il convient de bonne foi. Je ne vous parle de ses défauts que parceque je crois devoir le dépeindre tel que je le connais. Ses défauts n'affectent que son esprit et ne portent point sur le cœur<sup>4</sup>." His political view, more sanguine than that of the ministers at home, embarrassed by all kinds of domestic obstacles, embraced ambitious military plans and preparations, and the total destruction of the supremacy of France. Hence he soon became a great favourite of the old King, though he was by no means a Hanoverian, and regarded the "despicable electorate" and its ministers with scarcely less dislike than Pitt himself. He early, while still serving in the army, became disgusted at the duplicity, folly and weakness of the Court of Vienna, and at the narrow views and hesitation of the Dutch, and regarded the King of Prussia, for whose military exploits he had an enthusiastic

<sup>1</sup> Lord Chesterfield's *Letters* (Bradshaw), 1006.

<sup>2</sup> Thomas Wentworth (1672-1739), Baron Raby, son of Sir W. Wentworth of Wakefield, created Earl of Strafford in 1711. "Lord Strafford," says Swift in the *Journal to Stella*, 20 November, 1711, "is as proud as hell."

<sup>3</sup> H. 8, f. 279.

<sup>4</sup> A. Bourget, *Études sur la Politique Étrangère de Choiseul*, 140.



admiration, as the only power in Europe whose alliance was of essential importance to Great Britain.

He excelled greatly as a correspondent, in the clear exposition of the subject under discussion, and in the well-cut and well-balanced style, characteristic of the best writers of his time, often enlivened by amusing wit and lively fancy. In that capacity he appears to have been indefatigable; for though he employed secretaries, two of whom seem to have died practically at their desks from exhaustion<sup>1</sup>, by far the greater portion is written in his own large, clear hand. Its volume is enormous. It was kept up without intermission during the many years that he remained in the King's service, and with a great number of persons. His official correspondence with his chief, the secretary of state at home, was doubled by another with the Duke of Newcastle, which often contains freer and more candid expressions of opinion on men and measures; and the Duke took it much amiss if there was any relaxation in its continuance. This again was supplemented by a more expansive correspondence with his Father, and by letters still less reserved addressed to his brothers and sisters, and especially to his favourite sister, Lady Anson, as well as to friends and acquaintances, and to ministers at foreign courts. He appears to have maintained a number of spies or agents in various centres who supplied him secretly with news. Nearly all the continental intelligence came through his hands at the Hague, which place, on the renewal of the war, became the nearest point of communication; and he was thus enabled to send the first word to his own, and to friendly governments, of important developments. The first news of the renewal by the French of the work of fortifying Dunkirk, contrary to the Treaty, came from him in 1753. He was the first to give detailed notice to Frederick of Prussia, early in 1756, of the great design of France and Austria, in union with Saxony, to exterminate his power in Europe<sup>2</sup>. His frequent letters of advice and warning to the British government show that no man had a more complete knowledge of the course of events, or more insight and wisdom in dealing with them. From this time he becomes one of the most striking figures in the diplomatic world. It will be seen that his reputation and sphere of influence develop greatly during the years that now follow; and in 1754, on the reconstruction of the ministry,

<sup>1</sup> H. 3, f. 307; H. 8, f. 338; H. 16, f. 93; Schaiblin from a fit of apoplexy 1755, and Cramahé who succeeded him in 1756.

<sup>2</sup> See further chap. xxix.; H. 282, f. 97.

he was even considered for the post of Secretary of State in the government<sup>1</sup>.

In January, 1750, he was brought into Parliament for the Duke of Dorset's borough of East Grinstead, in opposition to a candidate of the Prince of Wales<sup>2</sup>; but his attendance in the House of Commons must have been very rare, and no speech of his delivery is recorded during these years.

"Myself came in first for Cambridgeshire," records the second Lord Hardwicke, "Charles for Reigate, Col. Yorke for East Grinstead; good days for the family<sup>3</sup>." In November, 1753, John Yorke was brought in by Lord Rockingham for Higham Ferrers in Northamptonshire, and the Chancellor had then four sons in the House of Commons.

Meanwhile Joseph, more impetuous and susceptible than his brothers, had more than once fallen in love. On one occasion he appears to have met with a refusal from a lady, styled by him "the widow Munter," who later, in 1754, further showed her bad taste by marrying the Chevalier de Bonnac, brother of the French ambassador. At least, Joseph Yorke's observations on the occasion seem to have a good deal of the flavour of sour grapes. "I bless my stars every day for my escape, and hope, if I am to be caught, it may rather be by a woman of sense, than by a fool with a fine skin and a great deal of money<sup>4</sup>." On another occasion he confessed an ardent affection for the daughter of Count Golowkin, the Russian ambassador at the Hague, sister of a lady by whom he had formerly also been attracted. The union, however, not meeting with the approval of his parents and family, he "made a sacrifice of his strongest inclinations to pride and ambition," and relinquished the project with regret. Later, in 1760, he rejected a very lucrative alliance with a lady worth £40,000, with further great expectations, prepared for him by his family at home<sup>5</sup>. It is permissible to sympathise with the victim of so much prudence who, as he says himself,

<sup>1</sup> H. 40, f. 9.

<sup>2</sup> H. 243, ff. 56, 98.

<sup>3</sup> H. 61, f. 30.

<sup>4</sup> H. 40, f. 26.

<sup>5</sup> Cf. Walpole (*Letters*, iv. 225), "a Marchioness Grey or a grocer, nothing comes amiss to the digestion of that family. If the rest of the trunk was filled with money, I believe they would really marry Carafattatouadaht—what was the lump of deformity called in the Persian tales, that was sent to the lady in a coffer?—and as to marrying both the girls, it would cost my Lord Hardwicke but a new marriage bill; I suppose it is all one to his conscience, whether he prohibits matrimony or licenses bigamy." Also H. 5, f. 258 and H. 37, ff. 144 and 146, and Add. MSS. 5832, f. 129.

"tired of being a single man," probably missed many years of happiness, and who did not enter matrimony till 30 years later<sup>1</sup>.

John and James, the Chancellor's youngest sons, were following their elder brothers' good examples. John, now member of Parliament for Higham Ferrers, was admitted to Lincoln's Inn in 1746, and called to the Bar in 1754<sup>2</sup>. He held the office of the Chaff Wax, in 1754 was appointed to a commission in bankruptcy, and was destined to be his Father's secretary and constant companion in declining years.

James, like his brothers, was educated at Hackney School and at Bene't College, Cambridge, where he matriculated in 1748 and obtained his M.A. in 1752. He represented the family in the Church, took Holy Orders in 1754, and was declared by the Archbishop of Canterbury to be making a "handsome beginning<sup>3</sup>." The following lines were addressed to him by John Duncombe :

Your rising Virtues soon will claim  
A Portion of your Brothers' Fame  
And catch congenial Fire.  
They shine in Embassy and War,  
They grace the Senate and the Bar  
And emulate their Sire.  
Invested with the sacred Gown,  
You soon, to rival their Renown,  
The glorious Task shall join.  
And while they guard Britannia's Laws  
You, steady to Religion's Cause  
Shall guard the Laws divine.

The two daughters of the family also had ceased to be that source of anxiety, which unmarried female progeny is said to cause fond parents. Elizabeth, the elder, married on April 25, 1748, the celebrated Lord Anson, the ceremony being performed at Powis House by the Archbishop of Canterbury at 7 o'clock in the evening, and the bride receiving a portion of £12,000<sup>4</sup>. In addition to his famous voyage round the world and capture of the great Spanish galleon, Admiral Anson had recently, in 1747, gained an important victory over the French fleet off Cape Finisterre, effecting another capture of enormous treasure, and had been created the same year Baron Anson of Soberton in Hampshire. His great naval abilities had been for some time recognized by the Chancellor, to whom he owed much valuable support at the beginning of his career, and who, in later years, stood by him manfully, when the

<sup>1</sup> pp. 182 sqq.

<sup>3</sup> H. 251, f. 156.

<sup>2</sup> *Records of Lincoln's Inn*, vol. iii. 356.

<sup>4</sup> *Erthig MSS.*

great admiral's fame was clouded temporarily by unmerited failure. Under the Duke of Bedford, and afterwards in 1748 under Lord Sandwich, he had practically directed the organisation and administration of the navy, and in 1751 he became actual head of the admiralty, his famous administration of the service lasting with one short unfortunate interruption till his death in 1762. His prolonged tenure of office was marked by great energy, efficiency and by valuable reforms, some of which, such as the corps of marines and the articles of war, have stood so far the test of time as to last to our own days<sup>1</sup>. The marines were entirely reorganized, or rather created, by him, made a corps separate from the army in 1755, and their numbers raised by 100 companies, amounting to 9000 men. Great improvements were carried out by him in naval administration and discipline, in ship-building, supplies and ordnance, and vital reforms introduced in tactics. He was elected a member for the House of Commons for Hedon in 1744, but he took no part in parliamentary business or in the struggles of parties. He laid no claim to oratory, and there is no record that he ever opened his lips in debate. Though a hero of the day, he took little pleasure in society and Horace Walpole sneeringly observes, "he was so ignorant of the world that Sir Charles Williams said he had been round it but never in it<sup>2</sup>." Cabinet discussions and office correspondence, the distaste for which he never overcame, afforded no scope for his great talents and energy, which found their proper sphere in practical administration and organisation and in solid seamanship. Lord Anson was probably the greatest naval administrator that this country has ever seen. He was, moreover, a man of great goodness, amiability and simplicity of character, which found expression in his open, manly countenance, and his tall upright figure.

"Lord Anson," wrote the second Lord Hardwicke in later years<sup>3</sup>, "was so worthy and valuable a character and so sincere a friend, that his name and memory should be ever respected and cherished by every member of our family. He had a very extensive knowledge, acquired more by practice than study of his own profession; he could explain it to others clearly and pointedly without parade or affectation. He was in himself shy and reserved, but when he was once free or admitted others to be so with him, no man could be more agreeable or communicative. He thought

<sup>1</sup> Prof. J. K. Laughton in the *Dict. Nat. Biog.*; and see chap. xxix. A. to H., July 22, 1758; Barrow's *Life of Anson*, 234, 394; J. S. Corbett, *England in the Seven Years' War*, i. 34; ii. 366 sqq.

<sup>2</sup> *George II*, i. 194.

<sup>3</sup> H. 80, f. 4.

deeper about men and things than a stranger would have imagined, who had only seen him in mixed companies. He had high notions of sincerity and honour, and practised them without deviation in all parts of his life. He loved reading little, and writing or dictating his own letters less; and that seeming negligence in an office, which must be attended with frequent applications to the first Lord in person; to which answers are always expected and are often proper, drew upon him the ill-will of many. He had a remarkable quickness in making dispositions of ships and appointing them to the services, for which they were fittest, and, without making a bustle or raising the daily newspaper or coffee house puffs, conducted the business of a very complicated department with uncommon vigour and dispatch. He had a natural partiality to a good sea-officer, and raised the greatest part of those who distinguished themselves in that service during the last war. He withstood recommendations of interest or favour more than any first Lord of the Admiralty was ever known to do. He was fortunate in his choice of commanders, except in that of Admiral Byng, and in him he was only mistaken with the rest of the profession; for nobody ever suspected the capacity or courage of that unfortunate officer, till the action off Mahon."

"As I was intimately acquainted with his private, as well as his public virtues," wrote Lord Hardwicke, his father-in-law, on the occasion of his death, to the Duke of Newcastle, "nobody can be more sensible of the weight of this loss, both to his friends and to the nation. I could mention instances of his private generosity which few persons rise to; and as to the public, I need say nothing to your Grace. As he had the clearest [?] military courage, I have sometimes wished that he had shewn a little more of the political kind; but that appearance was, in a great measure, owing to a natural modesty and bashfulness, which he never got the better of. *He was a man, take him for all in all* (as Shakespeare says), that I shall never see his like in that office<sup>1</sup>."

In Lord Anson the Chancellor's eldest daughter found an ideal husband. Lady Anson was herself a woman of great feminine attraction, who inspired affection and whose "humanity" was eulogised by Henry Fielding<sup>2</sup>. She was the nearest in age to, and the favourite sister of Col. Joseph Yorke, with whom, till her early death, she kept up a lively correspondence. She was fond of social

<sup>1</sup> N. 254, f. 383.

<sup>2</sup> *Journal of a Voyage to Lisbon*, July 5, 1754.

amusements<sup>1</sup> and of some ability and proficiency both in verse and painting<sup>2</sup>. The latter even received the praise of Mrs Delany, a near relation of Lord Granville and an ardent supporter of the opposite faction<sup>3</sup>.

A single incident which has accidentally survived the oblivion, which generally overtakes mere domestic charms and virtues of the past, shows her to have been also a woman of character and decision; for she refused, to the annoyance of her husband and her brother Joseph, to pay her respects to Lady Yarmouth, the King's mistress, and in consequence her visit to the Hague and Hanover, to which all three had looked forward was abandoned<sup>4</sup>. The newly-married couple took up their residence at first at Carshalton, at the same house which had been the home for many years of Lord and Lady Hardwicke<sup>5</sup>, and which probably still remained the property of the Chancellor. Subsequently, in 1751, Lord Anson, who now possessed a very large fortune, purchased Moor Park in Hertfordshire, celebrated for its gardens, which after 1752 they made their home<sup>6</sup>.

Margaret, the Chancellor's younger daughter, described as "perfectly beautiful" and of a "mild and affectionate disposition" was, like her sister, a woman of some literary ability and of cultured tastes and refinement<sup>7</sup>. She married on June 22, 1749<sup>8</sup>,

<sup>1</sup> Walpole's *Letters* (1903), ii. 428.

<sup>2</sup> See the lines addressed to her on her marriage by Soame Jenyns (*Works*, 1793, i. 142); also R. Cooksey's *Essays*, 34.

<sup>3</sup> *Correspondence*, December 23, 1752, "I have heard a great deal of Lady Anson's painting, and saw some very well done." A little feminine envy and spite appear in some other passages: Bath, November 17, 1755, "Lady Anson began the last ball in a green damask sack, trimmed very full with blond lace and lappets: I was much entertained with her airs." November 26, 1749, "If you hear of any reports of a disagreement between Lord Anson and his Lady, you may contradict them; *there never has been any*, she is a little coxcombical, and affects to be learned, which may sometimes put him out of countenance; but Lord Anson is a most generous, good-natured amiable man and he deserved a wife of more dignity." Horace Walpole's malicious gossip (see Sir J. Barrow's *Life of Anson*, 111), and Sir C. H. Williams's indecent epigram (*Works*, ed. by Walpole, ii. 271) are not worth transcribing.

<sup>4</sup> p. 184.

<sup>5</sup> p. 168.

<sup>6</sup> Walpole, however, who visited it, was "not much struck with it, after all the miracles I had heard...there are not even chairs in the great apartment." (*Letters*, iv. 405.)

<sup>7</sup> Cooksey's *Essays*, 34; Mrs E. Carter's *Letters* (Pennington (1808), i. 470). See some verses of her composition, inscribed to her sister-in-law Lady Grey at Wrest, and written at the age of 14, printed in J. Nichols's *Select Collection of Poems*, vi. 350, concluding with the lines:

And O! if Heaven will hear my ardent prayer,  
And grant a wish, which from my bosom ne'er  
Shall be removed—long may these shades obey  
The mild commands of her, whose name adorns this lay!

<sup>8</sup> Walpole's *Letters* (1903), ii. 401.

Gilbert Heathcote, eldest son and heir of Sir John Heathcote, second baronet, and grandson of the famous Sir Gilbert Heathcote, Lord Mayor of London, one of the founders of the Bank of England, who was reputed, with his fortune of £700,000, to be the richest commoner of England of his time. The bride received a dowry of £9000 from her father and £10,000 from her father-in-law<sup>1</sup>. The younger Gilbert inherited Normanton and his father's immense wealth in 1759. The marriage, in point of estate, was a great one; but the Heathcotes were Tories and had been Jacobites, and Sir Gilbert appears to have been a retiring, dull and uninteresting personage. An offer from Lord Hardwicke and the Duke of Newcastle to bring him into Parliament in 1756 was declined abruptly as "very disagreeable to him"<sup>2</sup>. He was regarded with little favour by his wife's brothers. His persistent self-seclusion from society, Col. Joseph Yorke declared, would turn to his own and his wife's misfortune, who would get tired of seeing each other from morning to night and nothing else, and would grow peevish or worse<sup>3</sup>. "What a beast indeed is H. to prevent his wife's going to the Masquerade," he writes later in January 1755, "and why does not the Chancellor take him a little more to task. If I had been in England, she should have gone....I do not see why we are to be browbeat so continually by such a brute, or where the harm can happen from his being forced into a little better manners"<sup>4</sup>. There are no complaints, however, from Lady Margaret herself, and it must be hoped that Sir Gilbert proved more amiable and engaging as a husband than as a brother-in-law.

The Chancellor's regard and interest in his children followed them all to their new homes, and in their various spheres and avocations, and drew them together, with the strong ties of family affection, in happy reunions under his roof. "The Wimpole congress," he writes to his eldest son in October 1748, "is the principal pleasure of my life"<sup>5</sup>.

<sup>1</sup> H. 880, f. 206.

<sup>2</sup> H. 346, ff. 344, 347.

<sup>3</sup> H. 39, f. 184.

<sup>4</sup> H. 40, f. 46.

<sup>5</sup> H. 3, f. 166.

## CORRESPONDENCE

*Lord Chancellor to the Duke of Newcastle*

[N. 26, f. 178.]

POWIS HOUSE, *May 30th*, 1747, 9 at night.

MY DEAR LORD,

I cannot help returning your Grace a thousand thanks, under my own hand, for the kind concern you have been so good as to express for poor Charles. When I writ my postscript last night, I was under great uneasiness, tho' really I did not then know how ill he was. I was soon afterwards made sensible of it, and past the most unhappy night that ever I did in my life. My affliction was increased this morning by finding his delirium continue and, so far as we then knew, all the symptoms such as shew'd his fate to be very near. But upon Dr Mead and Dr Wilmot seeing him this forenoon, they discover'd some eruptions about his neck and bosom, which they judge indicate his fever to be of the milliary kind. In a short time afterwards his delirium went off, and he became calm and lay quiet, and since that has got some sleep.... Upon these grounds they have given me better hopes that, by God's blessing, he may do well.... I now think that the dreadful appearances of last night proceeded from the struggle between nature and the disease, upon the effort then making to throw out this eruption. I have not seen him today, and intend not to go near him now the eruption is formed. Your Grace, who has so tenderly felt much of this kind of anxiety, will pity my inquietude, which you will not wonder still continues. If Mr Pelham is at Esher, his good nature and great friendship for me will make him glad to hear this more favourable account. I pray God to continue both your healths, and am most cordially, my dear Lord, ever yours,

HARDWICKE.

[The next day (f. 180) the Chancellor writes that his son is better, but notwithstanding] I shall be under great uneasiness till a little surer judgment can be made of the event, which, with this good boy, I trust in the hands of God<sup>1</sup>.

[On June 16, 1747 (H. 3, f. 103), the Chancellor sends his eldest son a long letter of advice as to his conduct in the election, including instructions for the care of his health:] You can't drink,

<sup>1</sup> Also H. 39, f. 35.



and need not do it much yourself. If you find yourself hot and dry, drink Negus, I mean wine and warm water. And be sure to take care that your bed and sheets are *in all places* well-aired.... The King expressed himself to me most extremely pleased with your standing for the county....

*Hon. Philip Yorke to the Lord Chancellor*

[H. 3, f. 109.]

WIMPOLE, June 21st, 1747.

MY LORD,

I am very glad everything passed off so well on Friday, with so much harmony and good humour. The meeting was a very numerous one.... Yesterday was spent in signing the printed circular letters, which several of the gentlemen have taken home with them to distribute, and in walking the town to canvass. This is a compliment which has always been paid to the voters who live in Cambridge only, and took us up 7 hours and a half to go through. As we walked the whole time, I was heartily footweary when I got home. Most gave us favourable answers.... One particular I will mention to your Lordship now. It was formerly the custom to treat all the electors, but the last time the entertainment was confined to the gentlemen, and the common freeholders had a largess given them to bear their expenses viz. a guinea to those that come out of the Isle and half a guinea to those of the County. It was paid to those entitled to it on their producing a ticket. Mr Shepard and Mr Jenyns both say they found it not only the cheapest method, but most liked by the people, because they put the best part of it in their pockets<sup>1</sup>....

Your Lordship's most dutiful Son,

P. YORKE.

*Hon. Philip Yorke to the Lord Chancellor*

[H. 3, f. 124.]

WREST, Aug. 4th, 1747.

MY LORD,

Mr Rice has been here with his account and the vouchers; and as I imagine your Lordship may be curious to know the amount of the whole expense, I shall acquaint you that the money I have already paid and given draft for, on account of the election, comes to £2003. 11s. There is besides a bill sent me in by Mr Jenyns, as paid by him in part of his £500, the total of which is £185. 3s. and 6d.... It would be needless to trouble your

<sup>1</sup> See the verses addressed to Philip Yorke by Soame Jenyns, his colleague in the representation of Cambridgeshire (*Works*, 1793, i. 131), on the joys of electioneering, in imitation of Horace, *Odes*, 2, xvi.; and cf. Bubb Dodington's *Diary*, 253.

Lordship with the particular items of the account; I shall only select 2 or 3 of the most remarkable. The tickets on the election day came to £815, the bill at the Rose to £245, the meetings made under the direction of Mr Shepard to £136, and the use of 2 old elbow chairs for the candidates, belonging to Mr Mayor and Mr Alderman Graves, is set down at 4 guin<sup>s</sup>....After all, I believe it is the cheapest election that has been in Cambridgeshire for many years....

*Lord Chancellor to the Hon. Philip Yorke*

[H. 3, f. 126.]

POWIS HOUSE, Aug. 6, 1747.

...I have not of late expected that the expense of the election would be much less than you mention, tho' it is a monstrous one for an election without any opposition;...some method must be fallen upon to correct it on another occasion....I shall be glad to see all the bills when I come to Wimpole, and then will settle the affair with you. Let the whole account be made up....It will be a fortnight before I shall get released.

*Archbishop of York to the Lord Chancellor*

[H. 250, f. 277.]

BISHOPTHORP, Aug. 29, 1747.

MY LORD,

...Nothing in the world could be more acceptable to me than the enclosed from the young soldier<sup>1</sup>, who is almost at the top of his profession at a time when others are in the elements of it, and I am surprised at the quick progress he has made, when I consider this youngster as posting upon negotiations between the great Princes of Europe, at a most critical and dangerous juncture, and executing them to the approbation of his Master, whom the other day I saw *equitare in arundine longâ*. He has a brave spirit and honest heart. He is fearless, because he is virtuous; and successful, because he is prudent and considerate. Would to God the King had five hundred more such officers as he is, for the times want them exceedingly....We must not prescribe to Providence, but sure some check must be provided to stop the effusion of human blood. These two generals, with the idiot King in their hands, are the greatest criminals under the cope of Heaven, and it is amazing that so proud a generation, as the French nobility will suffer themselves to be thus annihilated....

<sup>1</sup> Col. Joseph Yorke.

*Hon. Charles Yorke to the Hon. Philip Yorke*

[H. 37, f. 74.]

Tuesday night, Oct. 13, 1747.

[On recovery from illness.] The kindness of your last letter to me is more than I have words to acknowledge. I know how well you love me; but to express it so cordially and so affectionately, as you have done on the late occasion of my illness, has touched me very sensibly, and gives me the most pleasing prospect that your friendship will make a great part of the happiness of that life, which providence has been pleased to allow me....

*Lord Chancellor to Lord Anson*

[Add. 15,956, f. 13.]

POWIS HOUSE, Aug. 30, 1748.

MY DEAR LORD,

After having so lately given your Lordship the trouble of a letter I should not have repeated it now, were it not for a piece of intelligence, relating to dear Lady Anson, which we received on Sunday night from Wrest. It gives me and her mother much concern to hear that, when Mr Yorke left her on Tuesday last, she had a feverish disorder upon her; and, though that was somewhat relieved by the account Mr Anson was so kind as to send by Wednesday's post, that she had no return of it, yet we cannot help being apprehensive that it might afterwards return and prove an intermitting fever. Your Lordship will excuse the trouble, which the anxiety of a father gives you, to be informed particularly how she now is, and it will rejoice me much to hear good news of you both. I must beg a little more of your indulgence, which my knowledge of her from her childhood induces me to presume upon. She has great spirits, rather superior to her strength, and is always inclined to make the best of her case. It is therefore necessary, on such occasions, to look a little beyond her own representations, especially at this time, when she is certainly mortified at any interruption of the pleasure she had promised herself in attending your Lordship at the Staffordshire diversions, and may be inclined to exert herself to partake of them, though at some hazard. [He therefore begs that she may not be allowed to go to the Lichfield races, and that Lord Anson will use his authority as well as his own.]

*Hon. Charles Yorke to the Lord Chancellor*

[H. 5, f. 41.]

DOVER, Aug. 30th, Tuesday night [1748].

MY LORD,...

Early the next morning, after I wrote from Lincoln's Inn, I set out for Rochester and reached it in the forenoon....

I came to Dover early on Saturday, where your Lordship will easily believe I have visited some things for their own sake, and others for the sake of those whom they may concern.... After church on Sunday I presented your Compliments to the Mayor and Jurats, who returned them in a most respectful manner to your Lordship.... Your Lordship's picture in the Town Hall keeps the best of royal company, Queen Elizabeth and King William; and I ought not to forget that I visited your old Lares<sup>1</sup>, and as I passed by besought a little of their influence. The mother of Mr Russell<sup>2</sup>, with whom I lodge, remembers you in your cradle, Mr Broadley before you went to school, others when you were very young, and all your townsmen take a pride in tracing the *incunabula vatis*. It may seem trifling to say it, but it flattered me to find, as much a prophet as you are, that you are spoken of with the greatest honour in your own country. I have received civilities from Cap<sup>tn</sup> Gunman and several more, who are always acknowledging their obligations to your Lordship. On Sunday, in the afternoon, I went over Chilton Farm<sup>3</sup> with Mr Russell and the tenant, and yesterday proceeded for the Isle of Thanet, by Wanson Farm<sup>4</sup>, Walmer Castle, Deal and Sandwich. Mr Garret met me at Ramsgate and we rode over the Drompton estate<sup>5</sup> this morning, almost as far as the North Foreland. The tenants seem to be industrious, substantial, honest men; and I did not go over a foot of the ground they shewed me, without reflecting every instant on your Lordship's goodness to me. I was much pleased with Nethercourt, where one of Mr Garret's brothers lives, in the Island, and the prospect from Minster Mill, which I took in my return; not forgetting the ruins of Richborough Castle.

As soon as I came into Dover this evening, I understood that the Dean of Canterbury and Sir T. Hales called yesterday to have seen me, whilst I was in the Island, as they happened to be in the town at the harbour sessions....

I am with all possible truth

Your Lordships most dutiful Son,

C. YORKE.

<sup>1</sup> The Chancellor's birthplace in Snargate Street, see vol. i. 33.

<sup>2</sup> The Russells were old friends of the Chancellor's family at Dover, the present Michael Russell acting as their agent; from them descended the present family at Swallowfield, see vol. i. 56 n.

<sup>3</sup> Part of the lands of Simon Yorke, the Chancellor's grandfather, see vol. i. 20.

<sup>4</sup> Gibbon property inherited by the Chancellor from his mother, see vol. i. 39.

<sup>5</sup> This estate had been purchased and handed over to Charles Yorke by the Chancellor.

*Col. the Hon. Joseph Yorke, Secretary of the Embassy at Paris,  
to the Lord Chancellor*

[H. 7, f. 12.]

PARIS, *Feb. 18*  
*March 1*, 1749<sup>1</sup>.

MY LORD,

I give an account by this post to the Duke of Bedford of a conversation I had last Tuesday with M. Puyzieulx<sup>2</sup> on the affairs of the North, which is curious enough, and proves clearly that the intelligence the King has had of this Court's designing to tempt us to a connection with them in that part of the world is very well founded. I shall be a little uneasy till I know whether I have conducted myself properly, as it is a ticklish point for a novice in negotiation to get clear of. I acted to the best of my understanding, and all I can say more is that I acted with the greatest civility and attention....

It will be very agreeable to me to be clear of that sort of conversation with the ministers, provided I can but convince them of the firm resolution the King is in to preserve the Peace which, you will see, they affect to doubt of and are, let them say what they will, a little alarmed at. A trifling anecdote will serve to shew your Lordship what is the opinion at Mons. Puyzieulx's of our determination to support and unite with Holland. I was by accident seated at dinner next to Mons. Larrey, which caught the eye of Madame, who does not want wit (tho' now and then a little satirical) and is certainly very well with her husband. She was offering round the table a dish that was next her, and when she came to me, she cried out: "Allons Mo<sup>r</sup> Yorke, je m'en vais vous en envoyer pour vous et Mo<sup>r</sup> Larrey sur la même assiette, pour voir un peu comment vous partagerez cela entre vous deux, car je voudrois voir s'il n'y a pas moyen de faire une division entre l'Angleterre et la Hollande." As the minister of the leading nation, I took upon me to answer and, without appearing at all embarrassed, replied that the likeliest and the only method I thought was by some favour from her hand, tho' to shew how just England was to her allies, I would make her the judge of the equality of my division. By this answer I got the approbation of the table, and turned the Lady's jest into a compliment upon herself.

I never saw anything so strong as the affectation of Mo<sup>r</sup> Schäffer<sup>3</sup> to be thought well at Mon<sup>r</sup> Puyzieulx's. Their conferences are long and frequent. The former, after he has had his audience,

<sup>1</sup> In a former letter of February 1<sup>st</sup>, 1749 (f. 6) he gives a long account of a conversation with Count Larrey, the Dutch envoy at Paris, who gave him warning of the desire of the French court to draw England away from the old alliance with Austria and the Netherlands.

<sup>2</sup> Louis Brulart de Sillery, Marquis de Puisieux, successor of the Marquis d'Argenson as foreign minister, a weak incompetent minister of Mme de Pompadour's faction.

<sup>3</sup> Baron Karl Fredrik Schäffer, Swedish minister at Paris.

generally retires to the window to minute down what has past, and then takes an opportunity to ask another, and this every Tuesday regularly. Besides this, I am told, he writes more than any foreign minister at this Court; he and Chambrier<sup>1</sup> always style one another père et fils, affecting, by every such method, to shew in public how intimately they are connected.

When I was last at Versailles, I went the round of the ministers of the Conseil d'État and saw Mo<sup>r</sup> Maurepas<sup>2</sup> and Mo<sup>r</sup> D'Argenson<sup>3</sup>, who received me with very great civility. The latter is in a very infirm condition, and by his appearance seems very unfit for the fatigues of business. His distemper is ... and that incurable, as is publicly said, notwithstanding which he generally shuts himself up, two days in a week, at a little country lodging with two ladies of pleasure. By this means one should think business must suffer in his department, and the talents which all the world allows him, be in some degree impair'd, or what amounts to much the same in effect, not employ'd to advantage.

Mo<sup>r</sup> Maurepas passes for a very vain man, and no great friend of Mo<sup>r</sup> Puyzieulx's, nor by what I can pick up is his department in a very thriving way; at least, if they are taking any considerable measures for restoring their fleet, it is as yet kept a profound secret; tho' one should think, if their preparations were very great, they are of a nature not to be quite unknown. I was told the other day, by a man that pretended to know something of the matter, that they want every kind of material in their yards, and that to put the fleet on any tolerable footing will take them up a very considerable time. How far this is true you may know better than I do, but this is what I am told<sup>4</sup>...

The gracious eye, with which your Majesty has had the goodness to look upon some of these letters, encourages me to lay the enclosed at your feet. I should not have presumed to take this way of doing it, if my unavoidable engagements in your Majesty's service had not absolutely prevented my attendance on your Majesty this day.

HARDWICKE.

*March 1, 1749.*

<sup>1</sup> Baron de Chambrier, Prussian minister at Paris.

<sup>2</sup> Jean Frédéric Phelippeaux, Comte de Maurepas (1701-1781), Secretary of State and Minister of Marine; he was banished from Paris this year on account of lines written against Mme de Pompadour, recalled in 1774 by Louis XVI as President of the Council.

<sup>3</sup> Marc Pierre, Comte d'Argenson (1696-1764), brother of the former Foreign Minister, Conseiller d'État 1740, War Minister 1742 to 1757 when he was disgraced. Cf. D'Argenson's *Journal et Mém.* (1863), v. 374.

<sup>4</sup> For further letters on the situation in France, see H. 7 *passim*.

[Endorsed in the King's handwriting.]

I thank you, my Lord, for the communication of this letter, which I have read with great pleasure, as being very instructif, and well turn'd.

GEORGE R.

[Lord Hardwicke sends the King another of his son's letters of <sup>June 27</sup>/<sub>July 8</sub>, 1749, to which the King replies, "I thank you, my Lord, for the communication of this letter, whose contents I think are of consequence. G. R.<sup>1</sup>"]

*H.R.H. the Duke of Cumberland to Col. the Hon. Joseph Yorke*

[H. 7, f. 61, copy in the latter's handwriting.] LONDON, *April 10th*, 1749.

DEAR YORKE,

You know me too well to expect long answers, tho' I must confess that no letters ever deserved them better than yours have done. They have highly pleased in the places where they have been shewn; and I can with truth assure you, that you are spoken of here in the light, which I wish and think you ought to be. I heartily congratulate you that since you had not the Duke of Richmond for your Ambassador you have Lord Albemarle<sup>2</sup>. Had I had the naming of one, either with regard to the Court he is to be employ'd in or upon your account, there could not have been one that would have answer'd better those two ends. I have been at Windsor the greatest part of this fortnight, where I much wish'd your company to have talk'd over past times, as well as to have shewn you my several new improvements, tho' I fancy at present you are got into such a delicate taste of improvements, that Windsor would no longer be allowed what it was. I assure you, the country was very necessary to me, to purify me after the bad air and humour I contracted in London; as, for want of better employment, the weak and virulent minority had diverted themselves and teased us with dividing upon every clause of the Mutiny Bill<sup>3</sup> for near six weeks together, but which, thank God, we carried thro' at last without any material alterations.

I enclose herewith a letter for Lord Cathcart<sup>4</sup>, and I desire

<sup>1</sup> H. 7, f. 68. See also others forwarded in the same manner with the King's comments, ff. 150, 164, 182, 208, 229, 321.

<sup>2</sup> William Anne Keppel, second Earl of Albemarle (1702-1754), governor of Virginia 1737, major-general 1742 and colonel of the Coldstream Guards 1744; took part and distinguished himself in the Flanders and Scottish campaigns, and was now made ambassador to France and the same year K.G.; Groom of the Stole and P.C. 1750; died in Paris in 1754.

<sup>3</sup> See above, p. 84.

<sup>4</sup> Charles, ninth Baron Cathcart (1721-1776), formerly one of the Duke's aides-de-camp, now sent to Paris as one of the two hostages.

you would not think my friendship altered by the irregularity of my correspondence, as you have too long helped me in that, not to know how negligent and idle I am. I remain your most affectionate friend

WILLIAM<sup>1</sup>.

*Col. the Hon. Joseph Yorke to Lady Anson<sup>2</sup>*

[H. 39, f. 133.]

PARIS, July  $\frac{1}{2}$ , 1749.

[Your letter] from Carshalton diverted me most, as it recalled to my mind all the scenes of my childhood in a comical light; and I enjoyed excessively the ideas which struck you upon inhabiting the same place as mistress of it, where formerly one was constrained by the looks of Papa and Mama. I dare say you were much surprised to find you could go out when you pleased, and I question whether you had half the inclination to go out you had then; but what would divert me most would be to see you taking the air on Banstead Downs with both the glasses up....

*Hon. Charles Yorke to the Lord Chancellor*

[H. 5, f. 75.]

[SPA] Sep: 8, 1749 O.S.

MY LORD,...

Lord Bath left us about ten days since; his son came from Dusseldorf to meet him, and they are gone by way of Brussels to Paris, where my lord and lady proposed staying till Christmas. I accompanied him as far as Liège, as a compliment of respect for the civilities he shewed me after my arrival. When I did not happen to be engaged with other company, he insisted on my dining with him, and in every respect showed the utmost politeness and attention to me. In conversation with me he talked freely of past times (I mean) before Lord Orford's resignation, but would not come down lower. He dwelt much upon his old acquaintance with Sir Robert, and the admiration he had of his abilities. Not a word to me of any minister now in power, but your Lordship, of whom he affected to speak with much honour, and that very often. But Mr Damer, who has been here in a bad state of health, with Lady Caroline, told me that Lord Bath had said to some people, that this administration could not last; for the most obstinate, and the most jealous man in the world<sup>3</sup> could never agree. Of Lord Granville and Lord Chesterfield he spoke sometimes, but with great coldness; and to my surprize commended Fox one day, as

<sup>1</sup> There appears no trace in this letter of the subsequent estrangement of the Duke from the family.

<sup>2</sup> Lord Anson and his wife occupied Carshalton House, formerly the home of the Chancellor and where his children were brought up.

<sup>3</sup> Mr Pelham and the Duke of Newcastle—the observation had great force.



the ablest speaker upon business amongst the King's servants in the House of Commons....

Believe me, [etc.]

C. YORKE.

*Lord Chancellor to the Duke of Newcastle*

[N. 34, f. 165.]

POWIS HOUSE, *Sept.* 14<sup>th</sup>, 1749, at night.

MY DEAR LORD,...

I cannot...restrain myself from acquainting your Grace that I am extremely mortified with what has lately pass'd relating to the Aid de Camps [to the King]. I cannot help thinking that it is contrary to all the hopes that had been given me, and what I had reason to flatter myself with. I don't mean by this that I had persuaded myself the King would do this for my son immediately; but what I mean is that his Majesty's filling up all the three vacancies at this time may shut the door upon him for years to come, which puts the affair in a very different light. Far be it from me to press improperly. I have learn't for some time past that my soliciting or pressing is of very little consequence. But I should humbly hope that his Majesty might be induced not absolutely to tie up his own hands, but at least to keep one of the three vacancies open and in reserve. I know it is said that Joe is a very young lieutenant colonel. He is of the 27<sup>th</sup> May, 1745, the same day with my Lord Cathcart, and there are a vast many younger. I know at the same time that, under these circumstances, much weight is never laid upon that objection but when there is an indisposition to do the thing. The three persons, now proposed to be promoted, are but two years elder; Col: Howard and Col: Rich, who both have regiments, not quite one year elder. I must therefore humbly entreat the favour of your Grace to prevent this blow, which I am sure would be a great mortification and discouragement to Joe; and to prevail with his Majesty if possible, at least to keep one of these vacancies in reserve and still open, that we [may] not be precluded of all hopes. And indeed, I should humbly think (abstracted from my son's case) that this would be the most advisable way for the King himself. I ask a thousand pardons for giving your Grace so much trouble, and am with my whole heart,

My dear Lord

ever yours

HARDWICKE.

[On September 15, 1749 (H. 242, f. 395), the Chancellor writes on the same subject to the Duke of Cumberland.]

*Hon. Charles Yorke to the Lord Chancellor*

[H. 5, f. 90.]

PARIS, Friday night, Oct. 20, 1749 O.S.

MY LORD,

I have not troubled your Lordship with any letters for some days past, as I have been engaged in visiting the French King's palaces....I was introduced with many other English (amongst whom was Lord Bath) to his Most Christian Majesty. The King spoke to Lord Bath with much civility, and was so gracious as to ask Lord Albemarle two or three questions about me. I went thro' all the forms of waiting upon the Queen at her Toilette, on the Mesdames before they went to Mass, and afterwards dined with Mons<sup>r</sup>. Puisieux, and attended the King at the grand Couvert in the evening....The old Chancellor<sup>1</sup> would have invited me if I had staid longer. The Dutch Minister, Mons<sup>r</sup>. Larrey, introduced me to him. He received me with great politeness, and spoke a great deal. I told him that I came to pay my respects to him, *comme un enfant de la Robe* to the Father of it; and presumed to say something handsome (at least as much so as I could make it) in your Lordship's name. He seemed pleased, and began with enquiring much after your Lordship; of your health, age, the weight of your office, the variety of its duties, and especially the extent of its jurisdiction. He said that as he had been told I was an advocate, and therefore acquainted with the books of the law of England, he should be glad if I would recommend to him some well written discourse upon the distribution of justice with us, and the departments of the several courts of Westminster. As I did not extempore recollect any book, which a foreigner could read with pleasure, or even understand upon that subject, I said that the finest geniuses of the profession in England were generally too much employed to write such treatises; and consequently the best extant were both too dry for entertainment, and too imperfect for information. He then talked of the English history, of Bacon, Burnet, Clarendon and others, whose works he had read. And when I took my leave he charged me with his compliments to your Lordship, with many expressions of the honour and esteem he had for your character; "and as for you," says he, "I hope you will shew the same genius, and find the same success."...

[On October 21, 1749 (H. 7, f. 126), the Chancellor writes a long letter to Col. Joseph Yorke on the neglect of the latter in the new appointments of equerries to the King, made while the Chancellor

<sup>1</sup> Henri François D'Aguesseau (1668-1751), the great Chancellor of France had almost as long a tenure of office—1717, 1720-2 and again in 1737 till 1750—as Lord Hardwicke. He was also famous for his learning, eloquence and high character.

himself was away from town. He had almost received a promise from the King, and yet these promotions were made without consulting the Duke of Cumberland, and Mr Pelham had solicited the King for Col. Boscawen.] I will own to you that, in the progress of this affair, I think I have not been well used by some friends, from whom I had reason to expect more friendship to serve me, and I have told them as much with great firmness, though with decency. What I have most reason to resent is that, after what the King had said to Mr Pelham and what I had writ, not one of them was pleased to interpose their good offices, or to say one word to his Majesty on the subject. I shall not soon forget it, though I will, for my own sake, conduct myself with prudence. [The Duke of Cumberland had not been consulted in the matter and expressed considerable astonishment. He concludes] I had writ thus far last night when I received the inclosed letter from the Duke of Newcastle, which I choose to send you that you may judge of it for yourself....It is a proof that I have made them sensible how much I feel this neglect, and that my manner of taking it has made some impression upon them<sup>1</sup>....

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 7, f. 134.]

PARIS, November 1<sup>st</sup>, 1749.

MY LORD,...

It concerns me that you have had reason to be hurt at the conduct of your friends, on my account; tho' the opportunity given to Mr Pelham to throw in a word in my favour was so fair, that I confess my surprise is not small to find he could neglect it...

What concerns me most, from the affection I owe and do bear him, is the coolness that appears between the King and the Duke. I have been long dreading it, for since I left England I have observed several things, which seemed to tend that way. The affection shewed to Lord Sandwich has certainly not helped to remove it, and I have thought H.R.H. not so assiduous last summer in paying his Court as formerly. I have been told too, from pretty good hands, that the King does not like the irregular way in which the Duke lives, particularly with regard to women, ...to which the King is not always a stranger [*i.e.* is informed of]. His Majesty, I have reason to believe further, has of late been much hurt at what was told him, and from his affection to the Duke, has express'd himself very warmly on the subject. He one day said, talking to L[ady] Y[armouth] about it: *That it*

<sup>1</sup> See pp. 91-2.

*was monstrous the Duke did not take better care of his health; that he was so angry about it he did not care if he was dead, tho' he believed it would kill him (the King) the next minute.* There is great paternal love mixed with this acrimony, but I doubt whether the Duke is enough attentive to remove the bad impressions meddling people, from different motives, give his Father. To be sure, the promotions of the last winter have not gone as the Duke wish'd, and that I could tell without hearing it from your side the water. In filling up his aides de camp, I have known the King commonly tenacious of nominating them himself without his son's intervention, and that even when he was in the height of his favour. This the Duke has told me himself, when he has formerly talk'd to me on the subject; and I particularly remember after the Battle of Culloden, when Lord Bury was sent up with the news of it, tho' the Duke told him he wished it him with all his heart, yet he would not venture to mention it to the King, for fear of preventing its taking place; if it required so much caution then, it is no wonder at least as much is necessary at present....All that could be done for me, I am sensible has been done by your Lordship, and it must now be left to time and the King's goodness to do it, when he sees proper. I am convinced solicitation would only retard my obtaining it next time, and I should be hurt, to the greatest degree, if on my account, your Lordship exposed yourself to the smallest vivacity<sup>1</sup>...

*H.R.H. the Duke of Cumberland to the Lord Chancellor*

[H. I, f. 16.]

ST JAMES, past two, Nov. 1, 1749.

MY LORD CHANCELLOR,

I would not fail acquainting you the first with the proper promotion the King has of his own accord given Col: Yorke by naming him his *Aide-de-Camp* in L<sup>d</sup> Bury's room. As you know my affection for Yorke and my regard for everything that relates to you, you will be best judge of the share I take in this mark of the King's favour to you and your family.

ever your affectionate Friend

WILLIAM.

*Hon. Charles Yorke to the Lord Chancellor*

[H. 5, f. 92.]

PARIS, Tuesday, <sup>Oct. 31</sup>/<sub>Nov. 11</sub>, 1749.

MY LORD,...

I had the honour to make your Lordship's compliments to the President Montesquieu; and as I had happened to converse with him, some days before, on the subject of those seignoral rights,

<sup>1</sup> The appointment had in fact been already made by the King.

which were the consequences of the feudal constitution, I had the fairest opportunity of giving him your Speech<sup>1</sup> and explaining it to him. He had said that he considered those rights as a barrier against the Crown, to prevent monarchy from running into despotism. I admitted that, under an absolute monarchy, they were a strength in the hands of the noblesse, and might be one means of preventing the government of France from becoming like that of Turkey; but that in a limited monarchy, as England, all private rights, which encroached on the legal authority of the Crown, tended to erect petty tyrants at the expense of the people's liberty. The Speech was very much to the purpose on this point, and I was happy to illustrate and support it by your Lordship's reasonings and opinion. I explained the history of the subject, the delicacy of it, the point of time at which it was taken up, and the returns of the Court of Session; so that the President followed the argument of the Speech with great ease. I added that it was taken from your mouth, as you spoke from short notes. I will not tell your Lordship what he said, tho' a very honest as well as a very able man; because, after the approbation given to the Jurisdiction Bill in your own country, I think your Lordship would feel little pleasure from the *Eloges* of the whole French Academy....

[On <sup>June 27</sup><sub>July 8</sub>, 1750 (H. 7, f. 270), Col. Yorke writes to his Father:]

It is undoubtedly in the head that France is weak, for the body is of a surprizing force; and the more I examine into it, the more I am struck with the strength and infinite resources of this Kingdom. I am further persuaded that, if once they take a turn to agriculture, and are wise enough to encourage propagation in the provinces (for it is the human species they are poorest in), by a diminution of the *Taille* and such like tyrannical oppressions, they will be twice as formidable as they are at present....

*H.R.H. the Duke of Cumberland to the Lord Chancellor*

[H. 7, f. 272.]

WINDSOR GREAT LODGE, *July 4th*, 1750.

MY LORD,

I received yours this morning, inclosing a particular letter from Col. Yorke...and was very sorry to observe his opinion of the resources rather higher than lower, as he is more acquainted with them. It is seldom I would wish him mistaken, but I most heartily wish him so now.

You could not have chose one more a friend to Col. Yorke than me for to consult on anything that is for his service<sup>2</sup>; but no one is a better judge than yourself in this point, and I see no very particular advantage it will be of to him. I should think Mr Pelham would be the properest person to advise with in this case.

<sup>1</sup> On the Scottish Hereditary Jurisdictions, see above, vol. i. 592.

<sup>2</sup> The reference is probably to the proposed appointment of Col. Yorke at the Hague.

As I shall be in town Sunday and the beginning of next week I hope to have the pleasure of seeing you then, and remain your affectionate Friend

WILLIAM.

*Col. the Hon. Joseph Yorke to Lady Anson*

[H. 39, f. 228.]

PARIS, *June 26*  
*July 7*, 1751.

...Shall I go to the Hague or not? The informed write me word that my friends will push for me. I shall be glad if they do, and succeed; for I begin to grow horribly tired of filling up the train of an embassy without a character, and with a chance, because I am thought not to do very ill, of being kept on in the same way. What alarms me is, that I remember during the war the Duke pressed very hard to have an old major, who had served with distinction, promoted to be L<sup>t</sup> Colonel and for three years together the King always replied, that he was so good a major, it was a pity to promote him....

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 7, f. 362.]

PARIS, *Aug. 7<sup>s</sup>*, 1751.

...I am very glad your Lordship agrees with me in your way of thinking about my private affair<sup>1</sup>. I am not naturally apt to lay things to heart, and particularly in affairs of this nature; whether it is good opinion of myself or bad opinion of others, I don't know; but I could never bring myself to believe that, because one opportunity was lost, another would never offer itself. I have naturally too much vivacity; and when I have undertaken a thing, I am for carrying it on warmly; but if once it fails, my vivacity takes another turn, and I am glad to be rid of it;...Charles shall not want my good advice, when I see him here....He certainly wants a wife to govern him a little and who, by obliging him to have some attention for her, might prevent him from having quite so much for himself; it is the only fault I know in him....

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 7, f. 365.]

PARIS, *August 14<sup>th</sup>*, 1751.

...What my real situation with the D[uke of Cumberland] is, I cannot say, tho' I have no great reason to imagine he has altered his opinion about me; but your Lordship knows that princes do not much trouble their heads about their humble servants, when they are out of sight. I take that to be my case with H.R.H., and therefore I am not surprised at his never mentioning me, especially

<sup>1</sup> The Hague embassy had apparently fallen through for the time.

considering all the late transactions in England, the principal actors in which I am more or less connected with, and am likely to be a gainer by them in the consequences. Those who write to me upon that subject, assure me that I am still well with him; and I can only say that I give myself all the trouble I can to execute the commissions he honours me with here, which are pretty numerous, through Sir Everard Fawkener's channel....

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 7, f. 368.]

PARIS, *Aug.* 21  
*Sep.* 1, 1751.

...I have seen some letters from Spa, which mention my brother Charles being arrived there. I hope he will find benefit. When I see him, I will do my best to cure him of his fancies, which are his worst distemper. He knows I wish him well, and I have always been upon a foot to speak very freely to him. I shall be sure not to commit your Lordship in anything I shall say to him....

*Col. the Hon. Joseph Yorke<sup>1</sup> to Lady Anson*

[H. 39, f. 240.]

HAGUE, *February* 14, 1752.

...Of all the places I ever was in, this is *that* one has the most occasion of a wife of one's own in; for upon my honour, those of other people are not worth picking up; one would not touch 'em with a pair of tongs, and as little converse with them. In this situation and without a single diversion, you will own it is a happiness to have a good fund of spirits and to love one's fireside, a companion that frequently amuses me when I retire from the Yahoos I meet with, whilst I am abroad. I look upon myself only as a passenger here, and therefore console myself with the thoughts of leaving it one day or other, either to go somewhere else or to be Secretary of State; for it must come to that at last, and indeed, till I came here, I did not think the residing here some time deserved so great a reward, but now I am thoroughly convinced of it...and yet with all that I am very easy and contented and ready, you may tell my Lord, with my kind love and compliments, to take any good match he pleases to give me.

The Duke of Newcastle<sup>2</sup> has already alarmed me with his intending to lodge in my house. He little thinks that the hangings of his bed-chamber are not up, nor his bed made, tho' I hurry it as much as I can, that I may lie in it till the very night before he comes. You don't know perhaps that that is necessary; I must therefore illustrate it by an example, the last time he came back from Hanover. He dispatched Cleaverly, the messenger, to Rotterdam to lie in his bed on board the yacht, that was to convey him to

<sup>1</sup> Appointed minister at the Hague in December 1751.

<sup>2</sup> The Duke accompanied the King abroad this year.

Moerdyck, and ordered that the Duchess's bed should be lay'n in likewise. On his arrival at Rotterdam, he enquired very earnestly whether the messenger was sure he had lay'n there, which, after he had sworn to, "Well," says he, "but who lay in the Duchess's bed?" "One of the sailors, my Lord." "Very well, you are sure of it?" "Yes." "Well, that's well." That Cleaverly is one of the best fellows upon the road, and the best at contrivance....

I am always in good spirits when I think of you, which I do every minute of the day. Adieu, ma très chère et très aimée sœur; embrassez votre mari pour moi, et aimez moi autant que je vous aime.

[“When Sir Joseph Yorke was ambassador at the Hague...the day before they [the King and the D. of N.] were to pass the sea, a messenger came at five o'clock in the morning and drew Sir Joseph's bed curtains. Sir Joseph starting asked what was the matter. The man said he came from the Duke of Newcastle. 'For God's sake,' exclaimed Sir Joseph, 'What is it? Is the King ill?' 'No'—after several fruitless questions, the messenger at length said, 'The Duke sent me to see you in bed, for in this bed he means to sleep.'” H. Walpole's *Walpoliana*, i. 32.]

*Col. the Hon. Joseph Yorke to Lady Anson*

[H. 39, f. 249.]

HAGUE, *April 24*  
*May 5*, 1752.

DEAREST SISTER,

I am infinitely obliged to you for your kind letter of the 19<sup>th</sup> Inst., as it brings me an authentic account of my Lord Anson's safe return to London, where we hardly dared to flatter ourselves he would arrive so soon, as the wind seemed to us quite contrary when he set sail. If Lord Anson took the will for the deed, he will then have thought himself well entertained; but else, what with the stupid surprize of all my servants, at the empressement of his Grace, and the little time that vivacity allowed me to spend with my Lord, I am afraid I stand in need of all his good nature and prejudice in my favour, to pass for a good host. I shall endeavour, however, to improve against another time; for as *avantageux* as you may think me, I was much humbled with the turn my domestics took, from an eagerness of doing better than ordinary. I shall not fail, however, against the Duke of Newcastle comes back, to have the drudging box well supplied with flour for all the rôti, in hopes that he will then be able to commend something really *à l'Anglaise*; for unfortunately, to shew his firm taste, he commended nothing as English but some Dutch cheese, (a secret I never let him into), which he abused me for fetching out [of] England to waste upon my foreign servants; voilà un échantillon de notre goût assuré. I had the honour to conduct his Grace as far as Utrecht, from whence I saw him set out the next morning in perfect health



and spirits, in a French post-chaise à une, into which he crammed himself and Johnson, the divine, who travels with him only out of friendship, and will certainly refuse a bishopric, whenever it is offer'd him<sup>1</sup>. Whether the Duchess is to make a third in the same vehicle, I am yet to learn, tho' I really do think three may as easily get in as two. Lord Anson will tell you what spirits he kept us all in whilst he staid, and I really think the States ought to make him a handsome allowance for raising their spirits once in two years....

*President Montesquieu<sup>a</sup> to the Hon. Charles Yorke*

[H. 2, f. 3.]

BORDEAUX, <sup>23 Juin</sup>  
<sup>4 Juillet</sup>, 1752.

Vous etes venu à Paris où je n'étois pas, vous n'etes pas venu à Bordeaux où j'étois; je me plains de ce que vous etes venu en France. J'espere, Monsieur, mon très illustre ami, de vous trouver à Paris vers le mois d'aout ou de septembre, et que vous me donnerés avis de votre voyage, pour que je puisse me vanter d'y être pour quelque chose. Vous me parlés de la lettre de Grotius à Hentius; j'ai peur qu'elle se vous ait trop frapé. Remarqués que Grotius, quand il écrivit cela, n'étoit pas de votre age; une noble ambition convient aux jeunes gens, le repos à un age plus avance; c'est la consolation de la perte des agrements et des plaisirs. Ne negligés pas des talents qui vous sont venus avant l'age, et qui ne doivent point etre contraires à votre santé, puisqu'ils sont votre nature même. Vous vous souvenes des belles choses que dit Ciceron dans son livre des Offices contre les philosophes, et combien il les mit au dessous de la vie active des citoyens, et de ceux qui gouvernent la république; et on ne peut pas le soubsonner d'avoir eu de l'envie contre ceux qui s'attachoient a la philosophie, puisqu'il étoit lui-même un si grand philosophe; le même dans un autre endroit appelle Archimede un petit home; et Platon n'alla en Scicille que pour faire voir à l'univers qu'il étoit, non seulement capable de donner des Loix à une république, mais de la gouverner. Continués donc une profession que vous faites avec tant de gloire; continués une profession qui fait, qu'en vous regardant, on se souvient toujours de votre illustre pere; continués une profession qui fait voir que dans un age très tendre, vous avez pu porter le poids de sa reputation sans vous courber.

Faites moi le plaisir, je vous prie, de faire remettre cette lettre a Mr le docteur Wauburton; j'ay une véritable impatience d'apprendre qu'il donne son grand volume de Julien<sup>3</sup>; c'est un bel ouvrage qui appartient a toutes les branches de la religion chretienne. Je vous remercie de tout mon cœur de ce que vous me mandés sur les ouvrages

<sup>1</sup> James Johnson (1705-1774), chaplain to the King and made Bishop of Gloucester this year (see above, p. 47), later bishop of Worcester.

<sup>2</sup> p. 143.

<sup>3</sup> *Julian, or a Discourse concerning the Earthquake and Fiery Eruption which defeated that Emperor's attempt to rebuild the Temple at Jerusalem...* (1750).

qui ont paru en Angleterre. Y auroit-il trop de hardiesse de ma part de vous prier de me donner vos reflexions et vos jugement [*sic*] ? Je me charge d'être de même vôtre correspondant à Paris. Je vous embrasse, Monsieur, et ay l'honneur d'être avec un respectueux attachement, vôtre très humble et très obéissant serviteur.

MONTESQUIEU.

*Col. the Hon. Joseph Yorke to the Hon. Charles Yorke*

[H. 37, f. 78.]

HAGUE, *June 30*  
*July 11*, 1752.

...I am sorry you do not seriously think of marrying; for I am convinced some amusement in your own house, to take you off sometimes from your more serious occupations, would make you pass your life more agreeably. A man like you should not be always forced to go out *pour se distraire*; and all the vain phantoms you have dressed up to yourself of what is necessary in the married state, would all vanish when once you had taken your resolution. I preach nothing but what I propose to myself. If some women refuse me, let them repent it; I shall find others and sooner or later, if I can't get a woman with a fortune, I shall please myself and marry without. I have calculated the whole, and find that I am drawing towards 30. When I have doubled that, by the grace of God, I shall be called an old fellow, or a very few years added to it will make me so. Why then, I have lived half the time most people live. Is it then really worth while to be computing whether I shall get £100,000 or nothing, or a good companion for the other half of my life. Voilà le résultat de mes méditations.

*Lord Chancellor to the Duke of Newcastle (in Hanover)*

[N. 43, f. 190; H. 64, f. 176.] Most private.

POWIS HOUSE, *July 3d*, 1752.

MY DEAR LORD,...

Your Grace has, I presume, been informed of the dreadful fire which happened in Lincolns Inn Square, in the night, between Friday and Saturday last. My son Charles's chambers were on the first floor, immediately over Mr Wilbraham's, in which the fire began, and had got to a great height before it was discovered. Charles went to bed at twelve, and about 20 minutes after one was waked *accidentally* by some noise, and that not then very great, in the Square. His chambers were instantly filled with smoke, and without staying to save anything at all, he was forced to run downstairs, in danger of suffocation, with nothing on but his shirt and breeches and an old frock thrown over his shoulders, without shoes or stockings. In that condition he ran across the Square, and took

shelter in his friend, Mr Clarke's chambers, from whence, in ten minutes time, he had the mortification to see the floor of his own chambers, with everything in them, fall in. His personal preservation was the more providential, as it was by mere accident that the door of Mr Wilbraham's chambers was prevented from being broke open, before he got away. If that had been done, the staircase had been immediately in flames, and it had been absolutely impossible for any person, that was above stairs, to have escaped<sup>1</sup>. He has lost everything, and came home to me almost as naked as he came into the world; but what affects him most is the loss of his library of books and all his manuscripts and papers, amongst which were my Lord Sommers's papers. I know your Grace's good nature will make you sympathize with your faithful friends under such a calamity. I must own this unforeseen event has given a new turn to my way of thinking concerning the office of Chaff-wax...for none of the persons, whom I mentioned in my former letter, know one word of the matter or of any intentions I had with regard to them, and I may afterwards find some other way of accommodating them. As I had given my son Charles his whole portion in possession and made all the provision I intended for him, his present loss is a very heavy one for a young man. But that is not my chief motive; for tho' I may be allowed to say that he has very good parts and has improved them with great application, yet his spirits are not of the best and firmest kind. For this reason, besides repairing his loss, I want to do something that may keep up his spirits and encourage him by some better permanent provision. Your Grace (if you remember such trifles) knows that the Crown-office is between him and his brother John jointly, so that the latter has one half of the profits. If it were possible, upon this accident, to turn it so that the King would give the office of Chaff-wax to Jack, which would be an equivalent for his half of the Crown-office, Jack should give up that share and Charles enjoy the whole of the Crown-office.... Whether a word could be flung in upon this subject, after the first emotion of compassion in the King on hearing of such a distress,

<sup>1</sup> Cf. Robert Ord to Lord Carlisle, June 30, 1752, Cary street (*Hist. MSS. Comm.*, Earl of Carlisle, 205), "We were much alarmed by the fire in Lincoln's Inn t'other night, though I think not much in danger; the account you have in the papers is pretty exact. The lives of Mr Cha: Yorke and four other gentlemen were probably saved by an old gentleman coming from the tavern, who found the porters breaking open Mr Wilbraham's door and with much difficulty stopt them, till they had waked the gentlemen above stairs, who had scarce got down stairs without their clothes when the fire burst through the door and set the whole staircase in a flame at once...."

I humbly submit to your Grace's consideration, and only entreat a few words of direction. The loss of deeds and writings in several of the chambers will be deeply felt by many families....

ever yours

HARDWICKE.

*Col. the Hon. Joseph Yorke to the Hon. Charles Yorke*

[H. 37, f. 80.]

HAGUE, July  $\frac{3}{4}$ , 1752.

When I wrote to you last post, my dearest brother, I little thought that I should so soon have an occasion to express my joy at your miraculous escape from the most imminent danger it is possible to be in. God Almighty has then preserved you, and permitted me still to tell you how much I love you, and how much I feel for your deliverance. May I never forget the blessed news he has this day permitted me to receive, and for which my grateful heart will never cease to praise his holy name. I am heartily concerned for the irreparable loss you have sustained, but as your dear life has been preserved, I cannot think of anything else, or look upon it as a thing of consequence. I really think, had I even been the greatest book worm in the world, in such a case as this, I could not spend a thought upon what the flames have consumed; and I am glad to hear you have such a love for us all, as to bear your loss with resolution and complacency of mind. Nay, I am almost persuaded, that this will make you exert still more, and that you will rise like a Phœnix out of the ashes. You must forgive me, if I am so happy at knowing you are safe and well, that I cannot suppose that you miss any thing else, because I do not, and because I know that you may command everything I have, or can procure....Another thing is to use your interest in Lincolns Inn to get stone staircases made instead of the wooden ones, which is a precaution used in all public buildings, except in our own country, and which you see is of the utmost importance....How much I wish that my political rubbish could supply the place of what you have lost, or that by burning them all I could restore your valuable papers to you, tho' indeed life is so short that it does not much signify. Remember the advice I gave you in my last letter. I am now convinced you ought not to live in Chambers; and therefore long to see you settled in a house, and most sincerely hope you will not think seriously about it, but really set yourself to bring it about, and I am convinced you would not find it so difficult, and that it would contribute to your ease and happiness....God preserve you always, as he has so manifestly done in this instance, and give you long life, health and happiness! I am, and shall be whilst I live, my dearest brother, Yours from my heart, most affectionately....

J. Y.

*Duke of Newcastle to the Lord Chancellor*

[H. 64, f. 179; N. 43, f. 206.]

HANOVER, July 1<sup>st</sup>, 1752.

MY DEAR LORD,

The messenger is just come in with your most kind letter of the 3<sup>rd</sup>. I must begin...by expressing my most sincere joy at the providential escape of poor Charles. I feel at the same time for his great and irreparable loss....I have laid the circumstances before the King in the best and most feeling manner I could, and indeed His Majesty seemed touched with them. But as truth and sincerity are the characteristics of every good man, and remarkably so of your Lordship, I should not act agreeably to them, if I advised making any alteration in that inconsiderable office of the Chaff-Wax, which has given us both so much anxiety.... His Majesty was pleased to say; *My Lord Chancellor is getting every office that falls in the law for his own children.* I took that up pretty strongly....I treated this office (as I really thought it)...as an inconsiderable object—a thing of course, scarce a favour but rather a right of office. If after this you would have any alteration; you know I shall always do what you desire. I ought to do so, for I know from what cause, and I guess from whom, this originally comes<sup>1</sup>....

ever most affectionately Yours

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 43, f. 283; H. 64, f. 196.]

POWIS HOUSE, July 17, 1752.

...I am extremely obliged to your Grace for the cordial and affectionate concern you express for poor Charles....I own the observation about asking every office that falls in the law for my own children would have given me some vexation, if it had been true. Our memory used to be more correct. I have never procured or asked any office in the law for a son of mine, except the crown office, for the other little one was given to a nephew. My Lord Cowper got three very valuable ones for nephews, for his sons were then scarcely out of their cradles, and my Lord Talbot procured two in three years service. Such strictures, after so many years faithful and laborious service, must give rise to some serious

<sup>1</sup> The Duke of Cumberland and Princess Amelia.

reflections, and I return your Grace a thousand thanks for the friendly part you took on that occasion<sup>1</sup>\*....

*Col. the Hon. Joseph Yorke to the Hon. Charles Yorke*

[H. 37, f. 84.]

HAGUE, August  $\frac{1}{8}$ , 1752.

...Now, my dear brother, for my secret, which weighs upon my mind, and I shall be much lighter when I have unburthened myself in your bosom. You know my attachment to the family [that of Count Golowkin, the Russian ambassador] I have just been talking about; you know too how far that went some years ago. There seems to be a fatality which attends me in that house and, to say the truth, I was apprehensive of it when I was first named to come here; though I had then still some hopes of succeeding in a more advantageous way for my fortune, and whilst they lasted, which I pushed as far as they would bear, I would not listen to an inclination, which those who don't see and feel as I do, will certainly condemn, and I should perhaps the first, if it was not my own case. I am in plain terms in love with the sister of my old mistress, and not wildly, not as I should have been 8 or 10 years ago, but seriously, and with the strongest desire of being allied to her in the nearest manner. I foresee immediately a thousand objections crowd into your mind, which seem difficult to get over. I see that it will be said she is a foreigner, she is not rich, has little or no fortune and we know nothing at all of her. All that is true, and yet anatomize all these difficulties and they are reduced to one only, which is the fortune, and that I don't see in the strong light many others will do. As to her character, it would make me the happiest man alive; for I never saw more sweetness nor sobriety united in one person in my life, for I protest to you I am ten thousand times more in love with her character than with her figure. I have seen a good deal of the world, and am tired of being a single man. I am doomed to spend the flower of my life in foreign countries; by that means I am out of the way of making my fortune in England by a good match, and Mama declares she will not meddle with our affairs as to that point. If that is the case, what am I to do? I am old enough, and have been my own master enough, not to make a choice which should disgrace my family, or which I should repent of when the honeymoon is over. I ask nothing but the continuation of the protection of my friends which, I flatter myself, they would not think me unworthy the continuance of for having married a young lady of the first blood in Europe, of the same religion as

<sup>1</sup> The King's accusation was grossly unjust; Lord Hardwicke having asked for far fewer advantages of this kind than were generally supposed to be the right of persons in his office. His estate had been augmented by the long continuance in his profession rather than by royal favours. But the words were probably spoken in one of the King's passions.

\* My father told me afterwards that when he mentioned this little affair to the King on his coming over, he granted it very readily. H.

myself and who is, I am sure everybody who knows her will allow, a real treasure in herself. The wise people will say and very prudently, but she has no fortune; for 3, 4 or £5000 is nothing I allow; but why am I to be miserable on that account? I am advanced in the world, I think I shan't stop *en si beau chemin*, and I cannot long be without a regiment, which will be a very good addition to my income. As she brings little, she will expect little; and I am sure what I have to settle, which is small (though including the reversion of the house in Berkeley Square it may be 13 or £14,000) would thoroughly satisfy her and her friends, and if I live I shall make it still better than that. As to all other expenses at setting out and all that, I should ask nothing. Her family is here upon the spot and will with pleasure do that; as I am sure the old man would go to his grave much happier, if his daughter was my wife; and I really love him as tenderly as a father, and that is one reason for my wishing it still more. This then, my dear brother, is my history and the secret of my heart. As you love me and know my honesty, sobriety and prudence, for to you I may mention my own merit, you will not look upon this scheme as the heat of youthful blood and passion. It is not;...my mind is seriously bent upon it; let me beg your advice how to proceed, and your assistance, when you go to Wimpole, to negotiate the affair for me. I may be trusted in the affair; and if Papa and Mama have a mind to make me a happy man, they will leave me to my inclinations and kindly promise me not to withdraw their affection and assistance; for to marry with the fear of that would be dreadful...I trust my happiness in your hands...You love me; and have been bred up with me; exert your affection and tenderness for me in this affair...dear Charles,

Your most faithful and most affectionate.

*Col. the Hon. Joseph Yorke to Lady Anson*

[H. 39, f. 263.]

HAGUE,  $\frac{\text{Aug. 21}}{\text{Sep. 1}}$ , 1752.

...MY DEAR SISTER,

I am going to tell you a story, which will to the wise appear foolish, but...I am sure you will serve me if you can. Would you believe it, I am in love and seriously, not with the widow<sup>1</sup>, she has used me ill; not with a great fortune, I can find none, but with one whose character has caught me as fairly as ever any body was caught, and whose person, though a fine one, I had long resisted the charms of. It is no other than Count Golowkin's daughter. You have long known my attachment to the family and my apprehensions, in former times, of doing what the world calls a foolish thing. I have done my utmost to get the better of it; I have absented myself for a long time together from the house, but it all comes to the same thing...My firm resolution is then to

<sup>1</sup> The widow Munter.

bring it about if possible ; but I would not, for her sake more than my own, forfeit the protection of my family and friends. [He proceeds to enumerate the advantages of the proposed marriage]....I have wrote to Charles to help me in the negotiation...and to interest as many as he could for me, as I am afraid of losing what I regard as the greatest treasure, that ever was offered to me. Lord Anson has seen her; he knows the family; he is good natured; he is my friend; I am sure he will shew it in this instance, when he sees that I have set my heart upon it. It is not the first fire of youth; I am too old and have seen too much of the world; I have been likewise my own master too long not to know the different sensations of a pretty face's causing and those, which are occasioned by a sympathy of inclination....Will you then, my dearest sister, stand my friend, and help to carry this affair through; concert, if you love me, this affair with Charles, and see how it is to be broke at Wimpole. Mama has always said she would not interfere with what we should do in this way; and as for Papa, when I spoke to him about the other you know, he yawned and said, "Jo, you know the world better than I do." Let them then trust me in an affair, which concerns my own happiness in life....You are now in possession of my most secret thoughts and my most tender wishes. You will see that your poor brother is far gone....You will, my dearest sister, not forget me....When your's and Lord Anson's surprise and laughing are a little over upon this sort of love letter, let me hear from you, and as you love me, remember that no time is to be lost for fear of accidents....Yours most affectionately. Best respects attend Lord A. I had twenty times a mind to have mentioned this to him, when he was here in April, but I still hoped to get the better of it; but I find it is impossible.

[On September 22, 1752 (H. 37, f. 88), he writes to Charles Yorke another letter on the same subject. He has received counsels of prudence from Lady Anson, and he will certainly not marry contrary to his parents' and friends' wishes.] I would not bring anybody I value enough to make a wife of into a family, where she should not be well received.

*Col. the Hon. Joseph Yorke to Lady Anson*

[H. 39, f. 276.]

HAGUE, Dec<sup>r</sup> 1st, 1752.

...I found that there had been thoughts of your taking a trip here, but when I inquired further I found to my surprise and, I own, my ignorance till then, that you never visited the Countess [of Yarmouth]. As soon as I heard that, I had nothing further to say; because it would be impossible to think of the journey, without paying a civility in that quarter. Upon being told that you never had visited, I asked the reason, but could not find it out. My Lord [Anson]'s prudence only said that he had mentioned it more than once as what he should like; but as he had found you averse to it, he had not pressed



it and he supposed you had advised with the higher Powers. When I learnt this, I was determined next time I wrote to ask you what particular reasons you might have to decline a visit, which is a mere matter of civility, which so many people make, and find their account in, and which our Master certainly takes as a mark of attention to himself. Scruples of conscience, to be sure, you can have none in a point so indifferent; and as to any punctilios, I think I could easily fight them over with you. You see what advantages some people draw from thence for themselves and families, and certainly without any risk, either to their reputations or anything else; and in the situation, where my Lord [Anson] is, where so many of us are, and none but myself of the family paying any attention there, such a civility would certainly be well taken and might be productive of good. I am far from wishing you should enter into any Court intrigues; I should be the first to advise you against them; but as one is not a necessary consequence of the other, I do think you might contrive to bring it about, unless you have any stronger reasons against it than strike me at present....

*Col. the Hon. Joseph Yorke to the Hon. Charles Yorke*

[H. 37, f. 90.]

HAGUE, Dec<sup>r</sup> 26th, 1752.

DEAR CHARLES,

I hope you ascribe my silence, since the receipt of your last kind letter, to the true cause, which is the not knowing what to say in answer to it; many of the arguments were so solid and others so friendly, that I was sorry to wish against them a moment....I shall wait for more favourable opportunities and, not for the first time, make a sacrifice of my strongest inclinations to my pride and ambition. [He repeats his advice to his brother himself to marry.] You may certainly find women enough with good fortunes who will be happy, as well as their friends, in your alliance; and yet you had rather live funking in your chambers and dying of the pip, than take courage and have amusement at home.... I have told Papa in a letter, and I insist upon it, that I have a fundamental objection to all the family, myself included, and that is a cursed way we have of overthinking everything, which keeps us as lean as carrion, and deprives us of a thousand things which sweeten the lives of our fellow creatures. I lament this kind of mind every day in myself, and would fain have you give us all a good example. In a word, Mr Yorke has no son; why are you to have none? If he is 10 years between every child, with the chance of girls, our hopes are in you; therefore I have a right to give you my advice, and I hope you will take it in good part....I give you 6 months to decide....

Yours most affectionately

J. Y.

[In subsequent letters (ff. 92 and 94) he declares that he will submit to the opinion of his parents, but hopes they will not always stand out, when they become] accustomed to the sound of foreigner, poverty, pride, alliance, fortune and many unfortunate etceteras. [He reiterates his advice to Charles to marry.] How the devil came we all by so much prudence and good sense; they are great encumbrances; and those who have none of them, are much better off<sup>1</sup>.

*President Montesquieu to the Hon. Charles Yorke*

[H. 2, f. 5.]<sup>2</sup>

PARIS, June 6, 1753.

Monsieur, mon très cher et illustre ami, j'ay un paquet de mes ouvrages, bons ou mauvais à vous envoyer; j'en seray peut-être le porteur. Il pourra arriver que j'aurois le plaisir de vous embrasser tout à mon aise. Je remets à ce tems à vous dire tout ce que je vous écrirois. Mes sentiments pour vous sont gravés dans mon cœur et dans mon esprit d'une maniere à ne s'effacer jamais. Quand vous verrez monsieur le Docteur Walburton [*sic*], je vous prie de luy dire l'idée agréable que je me fais de faire plus ample connoissance avec luy; d'aller trouver la source du savoir et de voir la lumiere de l'esprit; son ouvrage sur Julien m'a enchanté, quoique je n'aye que des très mauvais lecteurs anglois, et que j'aye presque oublié tout ce que j'en scavois. Je vous embrasse, Monsieur, conservés-moy votre amitié. La mienne est éternelle.

MONTESQUIEU.

L'abbé Sallier<sup>3</sup> et Monsieur de Fontenelle<sup>4</sup> vous saluent<sup>5</sup>.

<sup>1</sup> See further on this topic H. 39, ff. 266 sqq.

<sup>2</sup> Printed in *Letters from an eminent Prelate*, 377, where Charles Yorke says of the writer: "His heart is as good as his understanding in all he says or writes, though he mixes now and then a little of the French *clinquant* with all his brightness and solidity of genius, as well as originality of expression."

<sup>3</sup> Claude Sallier (1685-1761), philologist; Keeper of the MSS. in the King's Library at Paris.

<sup>4</sup> Bernard Le Bovier de Fontenelle (1657-1757), nephew of Corneille, secretary of the Académie des Sciences and the patriarch of the French literary world.

<sup>5</sup> Another letter, H. 2, f. 7.

## CHAPTER XXII

### PITT AND FOX

WRITING on March 7 Pitt describes Henry Pelham's death as a "loss utterly irreparable. The Chancellor is the only resource: his wisdom, temper and authority, joined to the Duke of Newcastle's ability as Secretary of State, are the dependance for Government. The Duke of Newcastle alone is feeble<sup>1</sup>." Lord Hardwicke<sup>2</sup> was now entrusted by the King with the settlement of the new ministry; and his efforts were immediately directed to the reconstruction of the Cabinet with the Duke of Newcastle as head of the government, to whom the chief power now naturally fell, supported by persons of weight in both Houses, and with Pitt as leader of the House of Commons. These were clearly the foundations on which the new administration could be constructed with the best security and prospects. Pitt's inclusion in the Cabinet, however, an event which would have had many good consequences, was once more prevented by the hostile determination of the King, whose resentment was kept alive by the Duke of Cumberland, the friend and patron of Fox. He significantly told the Chancellor at the outset, that he hoped no "person who had flown in his face" would be proposed to him.

For some time, indeed, the succession of the Duke of Newcastle to the chief power, vacant by his brother's death, hung in the balance. Fox had for long hoped to be Pelham's successor. He had, as we have seen, on several occasions, pandered to the Royal weaknesses, and affected to champion the interests of the Duke of Cumberland, the King's favourite son. He had thereby gained the King's favour, and he had secured numerous and influential supporters, including the Duke of Cumberland and

<sup>1</sup> *Grenville Papers*, i. 106, 111.

<sup>2</sup> The common talk of the town had named him, as well as the Duke of Newcastle, for the office of Lord Treasurer, of which the last holder had been the Earl of Oxford. Walpole's *Letters*, iii. 217.

Princess Amelia, the Dukes of Bedford and Marlborough, and Lord Sandwich. His friend Lord Waldegrave however says: "He increased the number of his enemies by discovering an eagerness to be the minister, whilst Mr Pelham was still alive; many of whose friends might possibly have attached themselves to him, if, instead of snatching at the succession, he had coolly waited till it had been delivered into his hands<sup>1</sup>." According to Dodington, who quotes Lord Barnard, "Mr Fox had declared he would have it; that he had served up to it and it was his due, and that he was resolved to give way to nobody<sup>2</sup>." The late minister had scarcely drawn his last breath, about 6 o'clock on the morning of March 6, before Fox was hurrying to the doors of all possible rivals or supporters of his claims. He was at Pitt's house "early in the morning," at Lord Hartington's between 7 and 8, and within a few hours had made pressing advances to the Duke of Newcastle and Lord Hardwicke. Perceiving now how much power was temporarily lodged in the Chancellor's hands, and regretting the imprudence of his recent audacious attack upon him, he sent him within a few hours of Henry Pelham's death "no less than three very humiliating and apologizing messages<sup>3</sup>," and in a subsequent interview "received the Chancellor's absolution<sup>4</sup>."

When the choice, however, lay between Fox and Pitt, there could be no doubt, in spite of these renewed professions, to which side the Chancellor would incline<sup>5</sup>. He had long known Fox to be a mere unscrupulous political adventurer, destitute of the sense of honour, whose recent conduct had afforded glaring proofs of treachery and gross dissimulation.

<sup>1</sup> *Memoirs*, 24; *Hist. MSS. Comm. Rep.* viii. 221.

<sup>2</sup> *Diary*, 161, 232. He continues: "That the Pitts, Lytteltons and Grenvilles had written a letter that, if Mr Fox had it, they would oppose; that Lord Bath had sent a message to the Chancellor that if Fox came in, old as he was, he would muster up a party to oppose...that Hartington was for him, that he thought the Duke of Grafton was so too."

<sup>3</sup> *Ib.* 232, 238; and below, pp. 205-6, 211.

<sup>4</sup> Walpole's *Letters*, iii. 219; cf. *George II*, i. 380, 382: "Fox acted reserve and retirement, and expected to be wooed...The Chancellor on his part contributed; he sent Lord Anson to Fox to offer reconciliation, though justifying himself on the former quarrel." This is no doubt Fox's own version (*Ib.* xxxii. and 384) which is contradicted by every other authority and is obviously false. The narrative continues: "The next morning the Marquis [of Hartington] carried Mr Fox to the Chancellor, where a reconciliation was completed; though, as this sincere man told Lyttelton and Granville, he had made peace with Fox, yet would never act in concert with him." *Hist. MSS. Comm. Rep.* viii. 222.

<sup>5</sup> "There is no doubt but the Chancellor and the Duke of Newcastle will endeavour to secure their own power by giving an exclusion to Fox," Walpole's *Letters*, iii. 217, and *George II*, ii. 40.

It is true that there was much also in Pitt's character and career which aroused misgivings. There had been here also a factious opposition and a pandering to popularity, in order to force an entrance into place and power, and an indefensible inconsistency with regard to great measures of policy, which were taken up and supported, or denounced and opposed, as best served his personal aims at the time. The Chancellor remembered Pitt's opposition to the retention of the British troops in Flanders in January 1744, his unscrupulous obstruction of the necessary upkeep of the army in 1738, his fatuous denial of the existence of any enemies, his absolute declaration against a standing military force, and in the same year his unwise denunciations of the Spanish Convention, for which, indeed, he afterwards expressed his regret, but only when an atonement was necessitated by his personal situation in subordinate office, hoping for entrance into the Cabinet and in alliance with the administration, whereby he was compelled, in his own defence and interests, to support those views, which he had formerly so eagerly condemned<sup>1</sup>. The Chancellor mistrusted his popular inclinations, his oratorical extravagances and his play to the gallery, which often led to wrong and unworthy conduct, the insulting language regarding the King and Hanover being perhaps the most flagrant and deplorable example. The abuse of the "despicable electorate," of a country which had one million inhabitants, one-sixth of the population of England, and the disparagement of the battle of Dettingen, where the "ardour of the British troops" was represented by Pitt as "restrained by the cowardice of the Hanoverians," the action nothing but "a lucky escape," which he would never "consent to honour with the name of victory," and the King's bravery as fictitious<sup>2</sup>—in brief the frequent encouragement of all the worst, most base and most dangerous popular prejudices and passions by the cheap arts of the demagogue, in order to serve personal and private views, were incidents in Pitt's career, which could not fail to arouse grave fears as to the kind of influence he might exercise in public affairs in the future. Nor would the Chancellor place much faith in those assurances, which Pitt now gave, of his abandonment of factious

<sup>1</sup> A. V. Ruville's *Pitt* (Eng. trans.), i. 154, 156, 170, 212, 224, 251. The unfavourable account, however, of Pitt's conduct, motives and intrigues presented by this author, who has followed Walpole with too little discrimination, cannot always be accepted; cf. also Pitt's attack on Walpole's excise and his subsequent recantation, above, vol. i. 98 n.; Walpole's *George II*, iii. 178; *Parl. Hist.* x. 464; Coxe's *Pelham*, ii. 139.

<sup>2</sup> *Parl. Hist.* xiii. 154, 166.

opposition<sup>1</sup>, which in fact was to be immediately resumed, directly the hopes of attaining office were diminished.

There were two ways, Pitt wrote to Lyttelton, of obtaining consideration and weight in the House of Commons; one by royal favour, which he had forfeited and which was denied him, and the other from credit in the country arising from opposition to public measures<sup>2</sup>. The latter was the instrument which Pitt had chosen to promote his personal and ambitious aims, and his ostentatious morality and attitude of lofty disinterestedness did not deceive the Chancellor, as they did the public, or inspire in him any feeling but distrust and contempt. Far from being the impetuous, frank, proud, romantic, reckless and generous patriot into which the popular imagination transformed him, the Chancellor knew him to be the most cautious, the most intriguing, the most artificial and the most dissembling of men, with whom both public policy and private friendship, while he remained excluded from office, were subordinated to his ambition, and than whom no one would execute more sudden *volte-faces*, submit, when necessary, to more humble condescensions, or present, during the transaction, a more "unembarrassed countenance<sup>3</sup>." On the occasion of the present crisis, moreover, Pitt had not responded to the Chancellor's call to co-operate in the establishment of the new ministry. He had remained at Bath, detained by an attack of gout (which we need not follow Walpole in representing as fictitious), and had replied to the Chancellor's invitation to visit him in letters which, instead of openly and frankly representing his desires and demands, contain nothing but vague expressions of good will and gratitude mixed with veiled threats, or to borrow the words of Burke, "significant, pompous, creeping, explanatory, ambiguous matter, in the true Chathamian style<sup>4</sup>."

Nevertheless, Pitt's true greatness could not be obscured by these failings, however serious. They were, indeed, chiefly the result of exclusion from office, and might be expected to disappear with the attainment of power. His abilities in Parliament, though he was not yet included in the administration, already employed in

<sup>1</sup> p. 204.

<sup>2</sup> *Ib.*

<sup>3</sup> Pitt's own expression, H. 15, f. 120; cf. *Life of Lord Shelburne*, by Lord Fitzmaurice, i. 76, autobiography, who is, indeed, no very trustworthy judge in general, but who had lived for 10 years in close political intimacy with Pitt, and whose opinion is fully supported by Burke and by Lord Hardwicke.

<sup>4</sup> Burke's *Correspondence*, i. 173; *Grenville Papers*, i. 106 sqq.; below, pp. 203 sqq., 214 sqq.

support of the ministers, had proved of the greatest value. "Though his political sins are black and dangerous," wrote in 1758 Lord Waldegrave, no favourable critic, "his private character is irreproachable<sup>1</sup>." In spite of his indefensible conduct in opposition, Pitt was a man of character, who in office (when once his personal ambitions were satisfied), though his vanity might render him a difficult and intractable colleague, could be depended on to carry through large measures of public policy, and would, without doubt, with his popular and parliamentary following and with his great talents, be an addition of immense strength to the Cabinet.

Meanwhile several anxious days passed, during which it seemed likely that the King's partiality might lead him to bestow on Fox the chief power; but the Chancellor, by carefully avoiding any appearance of dictation or control, guided the King's choice finally in another direction. On March 12, at a meeting of the Cabinet, together with the Duke of Devonshire at the Chancellor's house, the Duke of Newcastle, with the King's approval, was unanimously chosen First Lord of the Treasury and his brother's successor. But the Chancellor did not venture to extend his influence further, and Fox, and not Pitt, was made Secretary of State<sup>2</sup>.

[Endorsed by the Chancellor<sup>3</sup>.] Minute of such of the King's servants, as are of the Cabinet Council, who met, in obedience to His Majesty's commands, to consider of filling up the vacancies happening by Mr Pelham's death.

N.B. I delivered this minute on Wednesday, March 13th, to the King in his Closet, who read it over deliberately, and entirely approved thereof. His Majesty was afterwards pleased to deliver the same back to me to keep....

POWIS HOUSE, *March 12th, 1754.*

Lord President	Duke of Argyll
Lord Steward	Marquis of Hartington
Lord Chamberlain	Earl of Holderness
Duke of Devonshire	Lord Anson
Lord Chancellor.	

The Lords above-mentioned met in obedience to His Majesty's commands, and were acquainted by the Lord Chancellor that the King had been pleased to order such of his servants, as are of the Cabinet Council, together with the Duke of Devonshire, to be summoned to deliberate upon the most proper and advisable methods of filling up the vacancies, happening in consequence

<sup>1</sup> *Memoirs*, 16.

<sup>3</sup> H. 522, f. 245.

<sup>2</sup> pp. 206-13.

of the great loss, which His Majesty has sustained by the death of so able and faithful a servant as Mr Pelham.

The Lord Chancellor further acquainted the Lords that His Majesty had been graciously pleased to open to him his own ideas as to what might be proper to be done on this occasion, and to direct him to communicate them to their Lordships, in order to His Majesty's being informed of their sentiments thereupon; (viz.) that His Majesty's first idea was that it might be for his service, in the present circumstances, to divide the two offices of First Commissioner of the Treasury and Chancellor of the Exchequer, and to fill the former with some peer of great rank and character, and the latter with some gentleman of the House of Commons of proper talents for it. That, for the first, His Majesty had cast his eyes upon the Duke of Newcastle, who had long served him with ability and integrity, and greatly to his satisfaction, in the office of Secretary of State, and that, for the office of Chancellor of the Exchequer, His Majesty had thought of Mr Legge.

That, as by this means, a vacancy would be made in the office of Secretary of State for the Northern Province, his Majesty had thoughts of laying his commands upon the Earl of Holderness, from whose services he had received great satisfaction, to change his department of the Southern Province for the Northern.

That to fill up the department of the Southern Province, His Majesty had cast his eyes upon Mr Fox, who had served him a great while, and much to his satisfaction, in the employment of Secretary at War.

Their Lordships took these several matters into their serious consideration, and expressed the most dutiful sense of the King's great goodness and condescension in being willing to know their sentiments upon an affair of this nature and high importance. And their Lordships do unanimously lay their humble sentiments before His Majesty that the ideas, which he has been graciously pleased to communicate to them, are the most prudent and wise that could be formed upon the present occasion; and they humbly offer their opinion to His Majesty that (if he shall be so pleased) they may be carried into execution, as the most advisable plan for His Majesty's service in this critical conjuncture, and the best adapted to support the system of his affairs upon the same foot, on which they have been carried on for several years with great success.

The Lord Chancellor also laid before the Lords a letter, which he had received this day from the Archbishop of Canterbury, acquainting him with His Grace's opinion to the like effect<sup>1</sup>.

There is no doubt that the Chancellor acquiesced in the disaster of Pitt's exclusion from office—for it can be called no less—for fear of risking the whole, and throwing all into Fox's hands, by insisting on what was personally so distasteful to the Sovereign. "Lord

<sup>1</sup> p. 205.



Hardwicke," wrote Sir George Lyttelton, "to keep down Fox, his personal enemy, most ardently desired the advancement of Pitt, as soon as the obstacles in the Closet could be removed; but that was really a work of much more difficulty than Pitt's impatience would believe. An attempt to force the King to it so early as he wished, after the death of Mr Pelham, would have had no effect (as I have frequently heard Lord Hardwicke say) but to drive his Majesty into the arms of Fox, who, with a very considerable number of the Whigs, was ready to support him against such a compulsion, and might probably have made his party good, Mr Pitt's popularity not being yet acquired. Whereas his Lordship made no doubt that, if Pitt would have been quiet and friendly to the Government, the King would have been persuaded to give him the seals before the end of the year<sup>1</sup>." No one was more conscious than the Chancellor of the necessity for moderation and compromise in these arrangements, and his conduct now was similar to that pursued by him two years later, when he sacrificed the undoubted claims of his son, Charles Yorke, to legal preferment in order to facilitate Pitt's return to power<sup>2</sup>. "The not taking in Pitt" Lord Royston includes in an enumeration of the errors of the Duke of Newcastle's administration, "by insisting in the Closet upon his being made Secretary of State, or declaring, if it was refused, that he would not be answerable for the event of things. Neither did he take any pains to convince Pitt that he was sincere in his endeavours....The not engaging Pitt before the King went to Hanover last year [1755], when he had withdrawn himself from the House and had entered into no engagement with the P[rince] of W[ales], but was open to treaty, and had neither declared *for* or *against* measures<sup>3</sup>."

These are no doubt counsels of perfection on paper, but in the actual circumstances they were in reality impracticable. There was no truth, in any case, in the statement that the Chancellor's advocacy of Pitt's claims to office was insincere or pretended<sup>4</sup>. In his letter to Pitt of April 2, the Chancellor gives the strongest assurances that he has done his utmost to serve him and pledges thereto his honour, which assurances Pitt, in his reply, accepts without reserve, while he expresses his conviction that it is the King's hostility

<sup>1</sup> R. Phillimore, *Memoirs of Lord Lyttelton*, 478.

<sup>2</sup> Below, p. 371.

<sup>3</sup> H. 247, f. 4.

<sup>4</sup> "The Chancellor, ever since Pitt's return, had falsely boasted to him of having proposed him for Secretary of State." Walpole, *George II*, i. 392, who is followed with too little discrimination by Pitt's latest biographer, Ruville, *Life of Pitt* (Eng. trans.), i. 321.

alone that has stood in his way<sup>1</sup>. A further proof of the Chancellor's genuine support of Pitt, if such is needed, is afforded in Pitt's letter to his friend Lyttelton of April 4th, where, while expressing some sarcastic doubts of the zeal of the Duke of Newcastle, to whom he had written on March 24, representing his disappointment that the Secretaryship of State, on Fox's ultimate refusal, had not been offered to him, he avows the "deepest sense of his [the Chancellor's] goodness to me," at the same time that he declares himself obliged to resist his influence, and announces his determination to abstain no longer from opposition. On March 24 Pitt wrote, "You will say all you suppose I feel towards the Chancellor, as when I tell you I think him sincere in his professions, and reverence his wisdom before any man's. The Duke of Newcastle I don't charge with insincerity intentional or want of good will<sup>2</sup>."

Meanwhile Fox, finding there was no intention of giving him the real leadership of the House of Commons, or any share in the government patronage, had (on March 14) thrown up his office as Secretary of State, on the advice of the Duke of Cumberland, and retired to his former subordinate post of Secretary at War<sup>3</sup>. The Duke of Newcastle, by no means displeased at the prospect of having no rivals to his power in the Cabinet, and of keeping the direction of the House of Commons in his own hands<sup>4</sup>, immediately appointed to the vacant office Sir Thomas Robinson, a diplomatist, who had rendered useful service abroad, but who possessed no administrative ability or parliamentary experience. He forgot that rivals, exasperated by exclusion from power, may be much more active and dangerous than when soothed by the sweets of office.

Accordingly Pitt, who at first, and while he still cherished hopes of office, had given the strongest assurances of support and of his sense of obligation to the Duke of Newcastle and the Chancellor<sup>5</sup>, yielding to his feelings of disappointment, resumed his denunciations of Hanover and of foreign subsidies, and joined forces in an unnatural coalition with Fox, who enjoyed the steady support of the Duke of Cumberland; while both, though retaining their subordinate offices, attacked violently and unscrupulously the official leaders of the government in the House of Commons. "The not settling the

<sup>1</sup> pp. 214-6.

<sup>2</sup> Phillimore's *Memoirs of Lord Lyttelton*, 462, 467; and for the whole transaction *Grenville Papers*, i. 429 sqq.

<sup>3</sup> Dodington's *Diary*, 239, 271; H. Walpole's *George II*, i. 381; *Letters*, iii. 219, 224; N. 49, f. 243; *Hist. MSS. Comm. Rep.* viii. 220.

<sup>4</sup> Coxe's *Lord Walpole*, ii. 370.

<sup>5</sup> pp. 203 sqq.

management of the House of Commons in able hands, but having a notion that it could be conducted without a *minister* at the head of it," is rightly criticised by Lord Royston as one of the chief mistakes of the Duke of Newcastle at this time<sup>1</sup>. The administration was left practically unsupported, except by Murray, in the Commons; and this strange situation continued for some time, till January 1755. Fox, who had immediately regretted his resignation of office<sup>2</sup>, then undertook to cease from further opposition at the price of a seat in the Cabinet Council, which was followed, on April 26, by one in the Council of Regency during the King's absence abroad<sup>3</sup>, an office which was secured now, for the first time also, by the Duke of Cumberland. Pitt then perceiving the drift of Fox's political plans angrily declared all connection with him at an end, and that he would be "second to nobody<sup>4</sup>." It was with reference to this reunion between Newcastle and Fox that Pitt made use, afterwards in November, of his much applauded metaphor of the junction of the Rhône and the Saône, the one "a gentle, feeble, languid stream, and though languid of no depth, the other a boisterous and impetuous torrent<sup>5</sup>." The alliance, however, of Newcastle now with Fox was not so strange as Pitt's own unscrupulous coalition with Fox had been, or to use the Chancellor's metaphor that "fire and water should agree." The principal cause of this coalition of the ministers with Fox, moreover, had been Pitt's own conduct, which had forced them to have recourse to Fox<sup>6</sup>; and the renewal of Pitt's factious opposition now considerably increased as well the difficulty of surmounting the King's hostility.

<sup>1</sup> H. 247, f. 4.

<sup>2</sup> *Hist. MSS. Comm. Rep.* viii. 224, Lord Ilchester to Lord Digby, March 21, 1754, describing Fox as "now convinced that he has made as great a mistake, as ever was made by man...and laments himself in a most passionate manner, blaming everybody."

<sup>3</sup> pp. 219, 221; Walpole's *George II*, i. 420; *Letters*, iii. 271; *Chatham Correspondence*, i. 132.

<sup>4</sup> *Ruville, Pitt*, i. 348, 356; *Walpole, Letters*, iii. 268; *Chatham Correspondence*, i. 124-137; *Lord Waldegrave's Memoirs*, 31 sqq., 155 sqq.; *Dodington's Diary*, 282, 284, 333; *Walpole's George II*, i. 392, 409, 417, ii. 21, 37. According to this writer (i. 418): "The Chancellor had discovered so much of the secret of his breast as to ask Pitt, 'Could you bear to act under Fox?' Pitt replied, 'My Lord, leave out *under*: it will never be a word between us, Mr Fox and I shall never quarrel.'" According to Potter, one of Pitt's followers, Pitt's rupture with Fox was caused by the latter's "eagerness for power, which inspired a doubt of his firmness on trying occasions"; because "it was apparent he was always pursuing a private rather than a joint plan," and on account of his "implicit obedience to the commands of the Duke of Cumberland." *Grenville Papers*, i. 142.

<sup>5</sup> *Walpole's George II*, ii. 58.

<sup>6</sup> See p. 204 n.

The Chancellor, however, and the Duke of Newcastle endeavoured once more to resume negotiations. Pitt was first approached in April, 1755, shortly before the King's departure and at the time of Fox's inclusion in the Regency, by the elder Horace Walpole, when he demanded the immediate insistence of his claims upon the King, to lead the House of Commons, and a definite promise of the next vacant Cabinet office<sup>1</sup>.

The Chancellor, who alone had prevented Pitt's summary dismissal at the close of 1754<sup>2</sup>, earnestly desired his accession to the administration and the strengthening of the government in the House of Commons; and on July 11, the Duke of Newcastle dispatched a letter to Lord Holderness in Hanover, to be laid before the King, urging Pitt's inclusion in the Cabinet in his own and Lord Hardwicke's name, and obtained the King's reluctant consent<sup>3</sup>. A few days previously, on July 6, a preliminary and tentative conference had been held, by the Duke of Newcastle's desire, with Pitt by Charles Yorke<sup>4</sup>, between whom a friendship, cultivated under the hospitable roof of Ralph Allen at Bath, existed. And this was followed by another on August 9, between Pitt and the Chancellor, when the latter candidly explained the position of affairs, and while showing the impossibility of then giving a definite promise of the Secretaryship, offered meanwhile a seat in the Cabinet<sup>5</sup>. There seemed at this moment every prospect of an agreement, even on the subject of the foreign subsidies, which were in reality, in Pitt's mind, matters of secondary importance in comparison with the satisfaction of his personal ambitions; but once more the project of this alliance, so necessary in the public interests, was doomed to failure. The meeting between Pitt and the Duke of Newcastle did not take place for some weeks; and during the interval the stability of the government received a new shock by the revolt of Legge, the Chancellor of the Exchequer and adherent of Pitt, who, under the latter's influence, had grown rebellious, and now, in August, took

<sup>1</sup> Dodington's *Diary*, 301; Walpole, *George II*, ii. 37, 40.

<sup>2</sup> pp. 221 sqq., 229.

<sup>3</sup> p. 229; Walpole's *George II*, ii. 387, appendix.

<sup>4</sup> Pitt had also visited Lord Royston at Wrest in the autumn of 1754. *Chatham Corresp.* i. 116. See below, pp. 227-9; and H. 67, f. 15, N. to H. July 25, 1755, who writes again, "Pray consider how we must entame the great Pitt: Counsellor Charles must come to our assistance." The statement of James Grenville (Dodington's *Diary*, 302), that the assurances of friendship and support that Charles Yorke was commissioned to give Pitt were repelled by the latter, who refused any favours and any conferences is contradicted by the sequel.

<sup>5</sup> pp. 230 sqq., 237.

occasion to raise difficulties by refusing to sign the Treasury warrants for the Hessian subsidy<sup>1</sup>. Moreover the imminent renewal of the war, which had been pushed on by the factions, both of Fox and Pitt, to embarrass the ministers, rendered the position of the government still more precarious; for no one placed any trust in Fox, who indeed now threatened to join the Opposition, if he were not further satisfied<sup>2</sup>. Pitt, who, on the first reconstruction of the ministry, might have been gained on easy terms, was no longer to be had on the same conditions. He saw himself now sought after, because the ministers had no one else to whom, in their embarrassed situation, they could have recourse; and the feeling of power arising from these circumstances, together with the sense of disappointment and of ill-treatment, rendered him now exacting and impracticable.

Accordingly, at a further interview at the end of August<sup>3</sup>, the Chancellor found Pitt's attitude far less friendly; and at a meeting between Pitt and the Duke of Newcastle, on September 2, all favourable impressions were found to be quite removed. Pitt, while acquiescing in the Hessian, refused to have anything to do with the Russian subsidy; though the Duke of Newcastle defended the latter as the fruit of four year's negotiations, and repudiated entirely a general continental scheme<sup>4</sup>. Pitt rejected definitely the Cabinet Council as insufficient, demanded the Secretaryship of State, an "office of advice" as well as one of "execution," with a share in the recommendation to employments and in the choice of measures, insisted on the necessity of a leader in the House of Commons and the cession by the Duke of Newcastle of a part of his "sole power," and eulogised the rebellious Legge as "the favourite of the House of Commons" and the "Child of the Whigs." Notwithstanding these exacting and peremptory demands, the Chancellor still supported Pitt. He thoroughly understood his character, and was convinced that, once the object of his ambition was secured, his opposition to the policy of the government would vanish. The alternative was the entrance into the Cabinet of Fox with great powers and a great following, patronized by the Duke of Cumberland and the King, and making a breach between the

<sup>1</sup> Walpole, *George II*, ii. 35. On November 8, 1754, the D. of N. had complained to the Chancellor of Legge's having ridiculed him, and had desired that Lord Anson and Charles Yorke should "talk strongly and roundly to him about his behaviour." (H. 66, f. 218.)

<sup>2</sup> pp. 234-6.

<sup>3</sup> p. 236.

<sup>4</sup> pp. 237 sqq.

<sup>5</sup> Dodington's *Diary*, 329; Waldegrave, *Memoirs*, 44; below, pp. 239, 244.

government and Leicester House. He saw clearly the dangers of this step, and declared his determination to have nothing to do with it, adding: "If any other persons shall be inclined to bring him in, I can acquiesce in it, as all personalities between that gentleman and myself are now quite over, as if they had never been; and I shall go on to serve the King, and adhere to and support my old friends, to the best of my poor ability<sup>1</sup>." "My Father's opinion," writes Lord Royston, "though indirectly given, was clearly for Pitt. [But] the King came over in ill-humour, and the Duke [of Cumberland] got about him, and Murray, with other friends of the Duke of Newcastle, were for Fox<sup>2</sup>." The Duke of Newcastle himself, moreover, was not so hostile to Fox as the Chancellor, and not so well disposed to Pitt, whose power, when once established as leader of the Commons and Secretary of State, he could not help fearing. Besides it was his opinion—and no man had a greater experience or prudence in such matters—that to ask so much for Pitt at once, would only embitter the King and render the situation of the government still worse<sup>3</sup>.

The final result, therefore, was that Fox was offered and accepted the Secretary of State and leadership of the House of Commons at the end of September 1755, and received the Seals of his office on November 15<sup>4</sup>; and Lord Barrington, a pliable character, became Secretary at War, with Sir George Lyttelton as Chancellor of the Exchequer. Pitt was dismissed on November 20, 1755, together with George Grenville and Legge, while James Grenville resigned the Board of Trade and Sir Thomas Robinson returned to the Great Wardrobe. Pitt had not waited for this open mark of the King's displeasure to resume his campaign of active opposition. On November 13 he again attacked Hanover and the foreign subsidies in his most declamatory style, and declared "that within two years His Majesty would not be able to sleep in St James's for the cries of a bankrupt people<sup>5</sup>." "How widely Mr Pitt departed afterwards [when he was in office] from the language he held at this time," wrote Lyttelton, "to gain popularity and distress the Court he opposed, I need not observe. The wonder is, that in doing so, he did not lose that popularity, but this must chiefly be accounted for by his almost miraculous success in the

<sup>1</sup> N. 51, f. 415.

<sup>2</sup> H. 67, f. 83.

<sup>3</sup> pp. 249, 250.

<sup>4</sup> Walpole, *George II*, ii, 43; *Letters*, iii, 349; *Grenville Papers*, i, 137 sqq.

<sup>5</sup> Walpole, *George II*, ii, 60.

war....It was quite impossible for me, as a man of honour and integrity, to join in an opposition which, at the beginning of it, in the year 1754 and through the ensuing session of 1755, had not even the pretence of any public cause, but was purely personal against the Duke of Newcastle<sup>1</sup>. Pitt continued his violent diatribes against Hanover in the House of Commons; and in May 1756 declared, in his most insulting tones, the electorate to be "a place of such inconsiderable note that its name was not to be found in the map," "a barren rock," to which the nation was chained like Prometheus<sup>2</sup>. The breach was now complete and this unfortunate issue had many unhappy consequences, besides the loss of Pitt's services to the administration, and the waste of his splendid talents in the petty sphere of factious opposition. The choice of Fox, "tied and bound," to use Pitt's expression, to the Duke of Cumberland<sup>3</sup>, was attended by serious disadvantages. The Duke, together with Fox, on the King's departure for Hanover, in April 1755, had obtained a seat in the Council of Regency, though this accession to his power was feared and deprecated by the Chancellor<sup>4</sup>, and the government was largely dominated by their influence and faction. The military appointments were in the Duke's hands as Captain-General, and were distributed among his own and among Fox's adherents; and the mismanagement in this province was largely the cause of the failures in the initial stages of the war<sup>5</sup>; while suspicions of the Duke's good faith and intentions made the ministers unwilling to increase the military forces in England<sup>6</sup>. Through the influence of the Duke of Cumberland and Fox, supported by Pitt, who wished to embarrass the Duke of Newcastle in the House of Commons and render himself necessary, the general

<sup>1</sup> R. Phillimore, *Mems. of Lord Lyttelton*, 478-480.

<sup>2</sup> *Parl. Hist.* xv. 704.

<sup>3</sup> Lord Waldegrave's *Mems.* 161.

<sup>4</sup> Coxe, *Lord Walpole*, ii. 381, who urged this measure upon the government in a memorandum: "As to Lord Chancellor, whose great talents, moderation and practicable disposition, nobody can have a better opinion of than myself, I must own that when I read to him at his house the paper...his thoughts upon it, relating to the Duke of Cumberland, appeared to me to be contracted into narrower views than seem consonant with the importance of our condition, and the disagreeable consequences apprehended from it at this great juncture. His Lordship intimated to me that H.R.H. was not very popular, and let fall something, from whence I concluded...that his Lordship may be of opinion it might fling the administration wholly into His Royal Highness's hands jointly with others in his immediate confidence, that are not friends to the chief ministers." See also Walpole, *George II*, ii. 21.

<sup>5</sup> p. 206; Waldegrave's *Memoirs*, 21, 46.

<sup>6</sup> Walpole's *George II*, ii. 19.

war with France was precipitated, before the country was prepared or ready<sup>1</sup>. The Princess of Wales, moreover, who regarded the Duke with intense aversion as a rival and enemy, and possibly a supplanter, became as a consequence, immediately hostile, and threw all her influence into the balance against the ministry; while the Leicester House faction was joined by Pitt and the Grenvilles<sup>2</sup>. The young Prince was induced to reject the project of marriage with the Princess Sophia of Brunswick Wolfenbüttel, desired by the King, and to persevere in his demand for the appointment as Groom of the Stole of Lord Bute, between whom and the Princess, according to common belief, there existed a criminal intimacy, of which there is no proof or sufficient evidence, but the suspicion of which alone was both an unquestionable disqualification and a public calamity. He refused, moreover, the King's offer of a separate residence. He remained with his mother at Leicester House, which became, under the guidance of Bute and Pitt, the centre of intrigues against the King's administration, and prepared that unfortunate development of events, which led to such disasters at the opening of the new reign<sup>3</sup>.

<sup>1</sup> "The Duke [of Cumberland] and Fox," writes Lord Royston, "were at this time [October 12, 1754] pushing things towards war; Pitt, without direct concert co-operating with them, because he knew the Duke of Newcastle would be distressed by such active operations in the then state of the House of Commons where, with a very great party and the real power at Court, his Grace had nobody to take the lead." H. 66, f. 202.

<sup>2</sup> *Grenville Papers*, i. 432.

<sup>3</sup> Lord Waldegrave who is, however, an adversary and not an impartial judge, and who allows Lord Bute not much more than "fine legs, a theatrical air of the greatest importance" and "an extraordinary appearance of wisdom," repeats a slighting reference to him of Frederick, Prince of Wales, adding "but the sagacity of the Princess Dowager has discovered other accomplishments of which the Prince, her husband, may not perhaps have been the most competent judge." "The Chancellor, with his usual gravity, declared [at the Cabinet Council] that for his own part he had no particular objection to the Earl of Bute's promotion; neither would he give credit to some very extraordinary reports, but that many sober and respectable persons would think it indecent, for which reason he could never advise his Majesty to give his consent." Waldegrave, *Mem.* 38, 67. Walpole criticises adversely the Duke of Newcastle's and the Chancellor's support of the King's objections to Lord Bute, as losing an opportunity of ingratiating themselves with the heir to the throne, and is so completely devoid of all sense of public duty that he can only imagine: "the truth was he [the D. of N.] was overruled by the Chancellor who, having been slighted and frowned on by the Princess in the winter, was determined to be avenged; and the gentle method he took was to embroil the Royal Family and blast the reputation of the mother of the Heir apparent." Nor can the Chancellor's conduct later, when he endeavours to persuade the King to give Bute some appointment other than the Stole, satisfy this severe moralist, which is then only "dishonourable sophistry" and "sanctimonious chicane." Below, pp. 249 sqq., 254, 296, 305; H. 522, f. 259; Dodington's *Diary*, 257, 286, 292, 294, 304; Waldegrave's *Mems.* 30, 37, 65 sqq., 161 sqq.; Walpole's *George II*, ii. 36, 39, 205, 221, 249.



## CORRESPONDENCE

*William Pitt to Sir George Lyttelton, Bart.*[R. Phillimore, *Memoirs of Lord Lyttelton*, 449.]

BATH, March 10th, 1754.

DEAR LYTTELTON,

I am much obliged to you for your dispatch, and am highly satisfied with the necessary reserve you have kept with respect to the dispositions of yourself and friends. Indeed the conjuncture itself, and more especially our peculiar situation, require much caution and measure in all our answers, in order to act like honest men, who determine to adhere to the public great object; as well as men who would not be treated like children. I am far from meaning to recommend a sullen, dark, much less a double conduct. All I mean is to lay down a plan to ourselves; which is to support the King's Government in present, and maintain the Princess's authority and power in a future contingency. As a necessary consequence of this system, I wish to see as little power in Fox's hands as possible, because he is incompatible with the main part, and indeed of the whole of this plan; but I mean not to open myself to whoever pleases to sound my dispositions, with regard to persons especially, and by premature declarations, deprive ourselves of the only chance we have of deriving any consideration to ourselves, from the mutual fears and animosities of different factions in court: and expose ourselves to the resentment and malice in the *Closet* of the one, without stipulations or security for the good offices and weight of the other<sup>1</sup> there in our favour. But do I mean then an absolute reserve, which has little less than the air of hostility, towards our friends (such as they are) at court, or at least bear too plainly the indications of intending a third party or flying squadron? By no means; nothing would in my poor judgment be so unfit or dangerous for us. I would be open and explicit (but only on proper occasions) "that I was most willing to support His Majesty's Government upon such a proper plan, as I doubted not His Majesty, by the advice of his Ministers, would frame; in order to supply, the best that may be, the irreparable loss the King has sustained in Mr Pelham's death; in order to secure the King ease for his life, and future security to his family and to the Kingdom; that my regards to the Ministers in being were too well known to need any declarations"; this and the like, which may be vary'd for ever, is answer enough to any *sounder*. As to any things said by Principals in personal conference, as that of the Chancellor with you, another manner of talking will be proper, though still conformable to the same private plan which

<sup>1</sup> Fox and the Duke of Newcastle.

you shall resolve to pursue. Professions of personal regard cannot be made too strongly; but as to matter, generals are to be answered by generals; particulars, if you are led into them, need not at all be shunn'd; and if treated with common prudence and presence of mind, cannot be greatly used to a man's prejudice, if he says nothing that implies specific engagements, without knowing specifically what he is to trust to reciprocally. Within these limitations, it seems to me, that a man whose intentions are clear and right, may talk without putting himself at another's mercy or offending him by a dark and mysterious reserve. I think it best to throw my answer to the Chancellor into a separate piece of paper<sup>1</sup>, that you may send it to his Lordship. I am sorry to be forced to answer in writing, because not seeing the party, it is not possible to throw in necessary qualifications and additions or retractations, according to the impression things make.

As far as, my dear Lyttelton, you are so good to relate your several conversations upon the present situation, I highly applaud your prudence. I hope you neither have, nor will drop a word of menace, and that you will always bear in mind that my personal connection with the Duke of Newcastle has a peculiar circumstance which yours and that of your friends have not<sup>2</sup>. One cannot be too explicit in conversing at this unhappy distance on matters of this delicate and critical nature. I will therefore commit tautology, and repeat what I said in my former dispatch: viz. that it enters not the least into my plans to intimate quitting the King's service, giving trouble if not satisfied to Government. The essence of it consists in this: attachment to the King's service and zeal for the ease and quiet of his life, and stability and strength to future Government under the Princess; this declared openly and explicitly to the *Ministers*. The reserve I would use should be, with regard to listing in particular sub-divisions, and thereby not freeing persons from those fears, which will alone quicken them to give us some consideration for their own sakes: but this is to be done *negatively* only; by eluding explicit declarations with regard to persons especially; but [<sup>?</sup> not] by *intimations of a possibility of our following our resentments*; for indeed, dear Sir George, I am determined not to go into faction. Upon the whole, the mutual fears in Court open to our connection some room for importance and weight, in the course of affairs: in order to profit by this

<sup>1</sup> See below.

<sup>2</sup> "The peculiar circumstance in Mr Pitt's *personal* connection with his Grace, which he desires me *always to bear in mind*, was his being brought by his Grace into parliament for one of his family boroughs [Aldborough in Yorkshire]. But this he forgot soon, as he did many other things declared by him in these letters; for instead of being *ready to be called out into action as often as the Duke of Newcastle's personal interests might require it*, he acted the next session with much personal malignity against the Duke of Newcastle, in conjunction with Fox, whom he speaks of as so *odious*. By which conduct, though he did not lay down his employment, he forced the administration to let in Fox." Phillimore, *Mems. of Lord Lyttelton*, 477.

situation, we must not be out of office : and the strongest argument of all to enforce that is, that Fox is too odious to last for ever, and G. Grenville<sup>1</sup> must be next nomination under any Government. I am too lame to move.

Your ever affectionate,

W. PITT.

*William Pitt to Sir George Lyttelton, Bart. (ostensible to Lord Hardwicke)*

[R. Phillimore, *Mems. of Lord Lyttelton*, 453.] BATH, March 10th, 1754.

MY DEAR SIR GEORGE,

I beg you will be so good to assure my Lord Chancellor, in my name, of my most humble services, and many very grateful acknowledgments for his Lordship's obliging wishes for my health. I am still under an utter impossibility of travelling, with much gout and pain in both feet ; it is particularly mortifying to me not to be able to wait on his Lordship to receive his commands in this unhappy and difficult conjuncture, when the King and Kingdom have sustained an irreparable loss. The best which can be done must leave, I fear, the public exposed to many disagreeable and perhaps dangerous contingencies—that this best, wherever it is to be found, will be done, I can safely trust to my Lord Chancellor's wisdom, authority and firmness in conjunction with the Duke of Newcastle's great weight and abilities, as soon as his Grace can recover into action again. I can never sufficiently express the high sense I have of the great honours of my Lord Chancellor's much too favourable opinion of his humble servant, but I am so truly and deeply conscious of so many of my wants in Parliament and out of it, to supply in the smallest degree this irreparable loss, that I can say with much truth, were my health restored and his Majesty brought from the dearth of subjects to hear of my name for so great a charge, I should wish to decline the honour, even though accompany'd with the attribution of all the weight and strength, which the good opinion and confidence of the master cannot fail to add to a servant ; but under impressions in the Royal mind towards me, the reverse of these, what must be the vanity which would attempt it ? These prejudices, however so successfully suggested and hitherto so unsuccessfully attempted to be removed, shall not abate my zeal for his Majesty's service, though they have so effectually disarmed me of all means of being

<sup>1</sup> George Grenville (1712–1770), second son of Richard Grenville and younger brother of Richard, Earl Temple. He had already by his ability made his mark in public life ; joined in the opposition to Walpole, a lord of the Admiralty 1744, of the Treasury 1747, now (June 1754) appointed treasurer of the Navy and a Privy Councillor, afterwards, when Prime Minister in 1764, the author of the American Stamp Act. See further Pitt's praise of him below p. 215 ; Pitt married his sister, Lady Hester, this year.

useful to it. I need not suggest to his Lordship that consideration and weight in the House of Commons arises generally but from one or two causes—the protection and countenance of the Crown, visibly manifested by marks of Royal favour at Court, or from weight in the Country, sometimes arising from opposition to the public measures. This latter sort of consideration it is a great satisfaction to me to reflect I parted with, as soon as I became convinced there might be danger to the family from pursuing opposition any further<sup>1</sup>; and I need not say I have not had the honour to receive any of the former since I became the King's servant. In this humiliating and not exaggerated view of my situation within the House, of how little weight can I flatter myself to be there? And how even would it be for me, were I in town, to assume anything like the lead, even though encouraged to it by as animating a consideration as my Lord Chancellor's protection, without the attribution of a weight, which does not belong to myself, and can arise to me only from marks of Royal Countenance towards me and my friends. Perhaps some of my friends may not labour under all the prejudices that I do. I have reason to believe they do not: in that case should Mr Fox be Chancellor of the Exchequer, the Secretary at War is to be filled up. I cannot leave off without repeating again the high sense I have of the great honour of my Lord Chancellor's good opinion. I fear I have very little else to merit any degree of it but unutterable good wishes for the security, ease and quiet of His Majesty's reign, and a firm attachment to the maintenance and stability of the Princess's authority as established in case of a minority, which God avert! And I hope I need not add that no one is more respectfully and gratefully attached to his Lordship than I am. Farewell, my dear Sir George,

Your ever affectionate

WM. PITT.

*William Pitt to Earl Temple*

[*Grenville Papers*, i. 112.]

BATH, March 11th, 1754.

MY DEAREST LORD,

I hope you will not disapprove my answer to Lord Chancellor....You will see the answer contains my whole poor plan; the essence of which is to talk modestly, to declare attachment to the *King's* Government, and the future plan *under the Princess*, neither to intend nor intimate the quitting the service, to give no terrors by talking big, to make no declarations of thinking ourselves free by Mr Pelham's death, to look out and fish in troubled waters and perhaps help troubling them in order to fish the better; but to profess and to resolve bonâ fide to act like public men in a dangerous conjuncture for our Country, and

<sup>1</sup> This conviction only lasted as long as the expectation of obtaining office remained.

support Government when they will please to settle it; to let them see we shall do this from *principles of public good*, not as *the bubbles* of a few fair words, without effects (all this civilly), and to be collected by them, not expressed by us; to leave them under the impressions of their own fears and resentments, the only friends we shall ever have at Court, but to say not a syllable which can scatter terrors or imply menaces. Their fears will increase by what we *avoid saying concerning persons* (though what I think of Fox, etc. is much fixed), and by *saying very explicitly*, as I have (but civilly), that we have our eyes open to our situation at Court, and the foul play we have had offered us in the Closet; to wait the working of all these things in offices, the best we can have, but in offices.

My judgment tells me, my dear Lord, that this simple plan, steadily pursued, will once again, before it be long, give some weight to a connection, long depressed, and yet still not annihilated. Mr Fox's having called at my door early the morning Mr Pelham died is, I suppose, no secret and a lucky incident, in my opinion....

[He concludes with recommending to Lord Temple, amongst other things, "a dinner to the Yorkes," *i.e.* to the Chancellor's sons, Lord Royston, Charles and John, all in the House of Commons, as "very seasonable."

On March 10, 1754 (H. 251, f. 163) the Archbishop of Canterbury writes to the Chancellor to condole on the death of Mr Pelham.] All I converse with...look up to your Lordship as our common friend and support, and the only man that can steer us happily through the difficulties that hang round us.

*Lord Chancellor to the Archbishop of Canterbury*

[H. 251, f. 165.] POWIS HOUSE, *March 11th*, 1754, Monday, 8 at night.

MY DEAR LORD,

The late melancholy event has greatly affected us all. I am sure nobody is more sincerely concerned for it than your Grace; and at the same time I fear you are angry with me for not writing to you upon it, and the consequences of it; but I give your Grace my word that I have had no time<sup>1</sup>. The poor Duke of Newcastle, under the most overwhelming grief, has been shut up; and I have been forced, in the midst of a broken attendance of the Court of Chancery, to be continually running about to the King, and to have meetings with the principal persons in the administration. If your Grace had been nearer, you had not escaped.—But to proceed to business.

<sup>1</sup> The Archbishop of Canterbury was *ex officio* a member of the Cabinet.

Your Grace has heard that the first candidate at Court is Mr Fox. Your Grace knows my situation with that gentleman. Within a few hours after poor Mr Pelham's eyes were closed, I had no less than three very humiliating and apologizing messages from him, which have not at all altered my way of thinking ; but I am determined to act such [a] part as I think best for the King and my friends in the present critical conjuncture, and to consider *personalities* no further, than to maintain and save the point of honour.

In the several audiences, which I have had of the King, His Majesty has declared that "he has no favourite for this succession, that he shall be for the best man, who can carry on the public service in the best manner; that he would have it considered by the Lords of his Cabinet Council, and know their opinion. But he hoped they would not think of recommending to him any person who has flown in his face." The meaning of this is plain, and I have seen Mr Fox through it, though His Majesty has never named him to me. Your Grace knows his great supporter at Court, and from that quarter the prepossession comes<sup>1</sup>. I have thrown out several considerations to His Majesty from day to day, and so have others. These have made an impression upon him, and he has been more *deliberative*. He begins to find that all the world is not for Mr Fox, as he had been told ; for in truth it is a very narrow clique, and many of them of the worst sort. If he should succeed to the plenitude of power, which Mr Pelham had, there is an end of this administration, and of all that you and I wish well to in that respect. He would also, by his connection in a certain place<sup>1</sup>, have another power added to it, which Mr Pelham had not for several years, the army. So here would be the *Treasury*, the *House of Commons* and the *Sword* joined together. At the same time, there is a great scarcity of men to fill the place with in any shape. The opinion therefore which I, with my friends in the Cabinet, have formed, is that there is at present no person in the House of Commons fit to place entirely in Mr Pelham's situation, with safety to this administration and the Whig party. Upon this they have proceeded to think of advising His Majesty to place some peer at the head of the Treasury, with a Chancellor of the Exchequer in the House of Commons under him. That peer must be somebody of great figure and credit in the nation, in whom the Whigs will have an entire confidence. He must be one,

<sup>1</sup> Duke of Cumberland.

who will carry on the election of the next Parliament upon the same plan, on which Mr Pelham had settled it without deviation. This is at present the immediate fundamental point. That once well settled and effected, the rest will follow with time. The Duke of Devonshire has declined it, but is entirely connected with the Duke of Newcastle, the Duke of Grafton and myself. In consequence of this, the Duke of Newcastle has been entreated by his friends to quit his present office, and go to the head of the Treasury, if His Majesty shall approve it. In him the Whigs will have a confidence. His Grace is much averse to it, and has good reasons against it, but will, I believe, for the sake of the whole, submit to the entreaties of his friends.

The Lords of the Cabinet are to meet at my house to-morrow evening at seven o'clock. There is no expecting to see your Grace here at that hour, nor do the Duke of Newcastle or I incline that you should run any risk. But we both wish to know your sentiments, and humbly hope that your Grace will authorize me to say something in your name. If your Grace is of this opinion, upon the matters submitted to your consideration, we both beg of you to write me a short letter by this messenger, signifying that "in your view of the present circumstances, your Grace apprehends that it will be most for His Majesty's service to divide the two offices of First Commissioner of the Treasury and Chancellor of the Exchequer, and to put some peer of great rank and weight at the head of the Treasury, and to fill the Chancellor of the Exchequer's place out of the House of Commons, as has been done in many instances. That, if His Majesty would be pleased to direct the Duke of Newcastle, who has served him long with great ability and integrity, to change his office of Secretary of State for that of First Commissioner of the Treasury, your Grace thinks (if such is your opinion) that it would be the best measure for His Majesty's service in this critical juncture, and maintain the system of things upon the same foot, upon which they have been for several years carried on with great success." I ask pardon for having presumed to go so far in the plan of your answer; but as I am at present more in the scene, I thought you would have the goodness to excuse it. This is the way of thinking of all the friends to your Grace and me, and as you are not used to differ from them, I hope your answer will be to this effect. All the words, which I have inserted, that are complaisant to the Duke of Newcastle, are entirely my own; for his Grace has not seen this

letter, nor knows one word that is in it. Indeed, poor man, his excessive grief makes him just now very unfit for business; so much so, that I believe he will not be able to bear being at the meeting; but we shall want the joint assistance of all our friends, though I am persuaded there will hardly be any difference of opinion. But that joint assistance will be wanting to carry the measure through effectually. Besides such an *ostensible* letter, I shall be much obliged for a *separate private* letter to convey any particular sentiments or observations, which your Grace shall honour me with. But that must be a *separate* letter.

If this plan should take place, we must expect that some promotion will be insisted upon for Mr Fox. That has been treated of *secretly* already, and possibly it may be, that my Lord Holderness should take the Northern Province, as Secretary of State, and Mr Fox be made Secretary of State for the Southern Province. If the power of the Treasury, the secret service and the House of Commons is once settled in safe hands, the office of Secretary of State of the Southern Province will carry very little efficient power along with it. The plan of the election of a new Parliament will be in safe hands which, (as I said) is the *immediate fundamental object*. When that is once well settled and chosen, with a good majority of sound Whigs, everything else will be consequential.

I am afraid I have tired your Grace, but I could not be shorter and explain myself. Your Grace will forgive me, for the sake of your friends and the good cause, to which you are so zealous a well-wisher, and so great a support. I must add one thing more, that your Grace would keep this letter and send it back to me, after this affair is over, that I may take a copy of it, after which it shall be faithfully returned. I am most entirely,

My dear Lord,

Ever yours,

HARDWICKE.

P.S. Your Grace will be pleased to introduce your letter by mentioning that you have received notice of this meeting by the King's command and, not being able to attend, send your thoughts to me etc. Be so good as to let me have your Grace's answer to-morrow by eleven o'clock in the forenoon, at furthest.

[The Archbishop answers on March 12 (H. 251, ff. 171-3) accordingly.]



*Duke of Newcastle to the Lord Chancellor*

[H. 66, f. 126.]

NEWCASTLE HOUSE, *March 12th, 1754.*

I cannot lose one moment in returning my thanks from the bottom of my heart, to my dearest and ablest friend, for the kind, affectionate and zealous part you have acted towards one, who depends upon you, for not being exposed where you have placed me, and for the great and noble part which you have acted as a great Minister, to determine the King in an affair of this importance. The best acknowledgment I can make to you is to put myself entirely, which by this letter I do, under your care and direction. I heartily thank you once more, and am ever most gratefully and sincerely yours,

HOLLES NEWCASTLE.

*William Pitt to Sir George Lyttelton, Bart.*[Phillimore, *Mem. of Lord Lyttelton*, 468<sup>1</sup>.]BATH, [? *March*] 20th, 1754.

...The Country here is delightful, and the taste I find in me for quiet, every hour takes deeper root in my mind. What can I do so well as yield myself up to this taste? to the tranquil comforts of indolence and innocence? I don't dare think I ever could have done much good; but since it is now become evident that I am never to be suffered to try to serve my Country, I have nothing left in my power but to be resolved not to hurt it....I hope my answer to the Chancellor<sup>2</sup> will not be disapproved; it contains my poor plan in the exactest limits and extent of it; and equally to this answer I should wish to form my whole conduct and *language* (when I thought proper to use any). I desire you will be so good to read it to the Chancellor....I wish to have it communicated to the Duke of Newcastle, and by you....I have not intimated, you see, anything with regard to what consideration I might expect for myself. I think it better that should arise from themselves, at least not come from me. If they are in earnest to avail themselves of me against what they fear, they will call me to the Cabinet; though a Cabinet Council office may be impracticable at this time, in future it may not, and I may be better able to undertake one. Whether they will do all they can for us, I cannot tell; but their wants are so great and will infallibly grow so fast upon them, that if God grants us all health, our poor depressed, betrayed, persecuted band, will have its weight, if we keep our tempers, and hold employments, and act systematically, without haste and fluctuation to the great plain objects of public good....Before I lay down the pen, I will say nothing can be so glaring as to say to you in one and the same breath, it was wished I was in town to take the lead, and to lay in

<sup>1</sup> Where the letter is dated May, probably an error.<sup>2</sup> Above.

a claim to plead the King's alienation of mind against me. Who could his Lordship think he was talking to? I, however, really honour and respect the Chancellor, and think him a great resource in these times....I beg you will mend the English in my answer to the Chancellor, if there are any slips.

*Sir George Lyttelton, Bart. to the Lord Chancellor*

[H. 244, f. 294.]

*March 23rd, 1754.*

MY LORD,

I waited on your Lordship this morning, both to enquire after your health, and to let you know that Mr Pitt, though otherwise well, is still so lame that he fears he can't be in town this week or ten days. I gave him the most faithful account that I could of what your Lordship had said to me upon the sight of his letter....But if your Lordship had leisure to write to him yourself, and thought proper to do it upon this delay of his coming to town, I believe he would feel it as a very great favour.

I hear from good hands that Mr Fox says he wishes to serve with, and *under*, Mr Pitt. I wish to have Mr Pitt serve with, and under, your Lordship. Pardon me, therefore, if knowing, as I do, that he would not be insensible to any mark of regard from your Lordship, I press your writing to him upon this occasion....

I am sorry to hear that the return of cold weather made your cough so troublesome to you last night. Your Lordship can't take too much care of your health. The public is always very greatly concerned in it, and can hardly be more so than at this crisis. One of the pillars of the Commonwealth has been thrown down. I pray God to preserve and strengthen the other.

Permit me to repeat the expressions of gratitude and attachment to your Lordship, which very sincerely broke from my heart in our last conversation, and believe that I am, with the highest veneration, my Lord,

Your Lordship's most obliged and most obedient  
humble servant,

G. LYTTELTON.

*Lord Chancellor to Mr Pitt*

[H. 75, f. 172; *Chatham Correspondence*, i. 89-103<sup>1</sup>; Phillimore, *Mems. of Lord Lyttelton*, 456.]

*POWIS HOUSE, April 2nd, 1754.*

SIR,

[He has read Pitt's ostensible letter to Sir George Lyttelton, excuses himself for not having written sooner, and proceeds:] I have

<sup>1</sup> Where the correspondence between Pitt and the D. of N. is also printed.

lived in such a continual hurry from the day of our great misfortune, Mr Pelham's death—

Ille dies quem semper acerbum  
Semper honoratum, sic Dii voluistis, habeo—

that I have had no time for correspondence.

The general confusion called upon somebody to step forth, and the Duke of Newcastle's overwhelming affliction and necessary confinement threw it upon me. I was a kind of minister, *ab aratro*, I mean the Chancery plough, and I am not displeased to be returned to it, laborious as it is to hold. I never saw the King under such deep concern since the Queen's death. His Majesty seemed to be unresolved, professed to have no favourite for the important employment vacant, and declared that he would be advised by his Cabinet Council with the Duke of Devonshire added to them; and yet I could plainly discern a latent prepossession in favour of a certain person, who, in a few hours after Mr Pelham's death, had made strong advances to the Duke of Newcastle and myself. I gained no further ground for four days and remained in a state of utmost anxiety, as well for the King's dignity, as for the event. To poll in a Cabinet Council for his first minister, which should only be decided in his closet, I could by no means digest, and yet I saw danger in attempting to drive it to a personal determination. My great objects were to support the system, of which Mr Pelham had been in a great measure at the head, by that means to preserve and cement the Whig party, and to secure the election of a new Parliament upon the plan he had left, though unfinished, which I inculcated to be the immediate fundamental object. This I stuck close to, as I saw it carried the greatest force; and I took advantage of the king's earnestness for a good House of Commons to show him the necessity of fortifying his interest there, not only by numbers but by weight and abilities. Under this head it might have the appearance of something I would avoid being suspected of, if I told you all I said of particular persons. I was not wanting to do justice to true merit; nor backward to shew him how real strength might be acquired. Some way I made, though not all I wished; and I drew out intimations that on this occasion openings might be made in very considerable employments, in which some of those I named would be regarded. I sincerely, and without affectation, wish that it had been possible for you to have heard all that I presumed to say on

this subject. I know you are so reasonable, and have so much consideration for your friends (amongst whom I am ambitious to be numbered), that you would have been convinced *some impression* was made, and that, in the circumstances then existing, it could not have been pushed further without the utmost hazard. It would be superfluous and vain in me to say to you, what you know so much better than I, that there are certain things which ministers cannot do directly; and that, in political arrangements, prudence often dictates to submit to the *minus malum* and to leave it to time and incidents, and perhaps to ill judging opposers, to help forward the rest. Permit me to think that has remarkably happened, even in the case before us. An ill judged demand of extraordinary powers, beyond what were at least in the Royal view, has in my opinion, helped to mend the *first plan*, and to leave a greater facility to make use of opportunities still to improve it<sup>1</sup>. This situation, with the Duke of Newcastle (whose friendship and attachment to you are understood and avowed) placed at the head of the Treasury and in the first rank of power, affords a much more promising prospect than the most sanguine could hope for, when the fatal blow was first given.

It gave me much concern to find by your letter to the Duke of Newcastle, which his Grace did me the honour to communicate to me in confidence, that you are under apprehensions of some neglect on this decisive occasion<sup>2</sup>. At some part of what you say I do not at all wonder. I sincerely feel too much for you, not to have the strongest sensibility of it. But I give you my honour there was no *neglect*. I exerted my utmost in concurrence with, and under, the instructions of the Duke of Newcastle, whose zeal in this point is equal to your warmest wishes. That an *impression* was made to a certain degree I think appears in the instances of some of your best friends, Sir George Lyttelton and Mr George Grenville, upon whom you generously and justly lay great weight<sup>3</sup>. I agree this falls short of the mark, but it gives encouragement. It is more than a colour for acquiescence in the eyes of the world; it is a demonstration of fact. No ground arises from hence to think of *retirement*, rather than of courts and business. We have all of us our hours, in which we wish for those *otia tuta*, and

<sup>1</sup> Fox, on the refusal of his demand for the leadership of the H. of Commons and further powers, had thrown up his office on March 14.

<sup>2</sup> Printed *Chatham Corr.* i. 100, dated there April 5.

<sup>3</sup> Grenville was made Treasurer of the Navy and Lyttelton Cofferer of the Household.

I have mine frequently. But I have that opinion of your wisdom, of your concern for the public, of your regard and affection for your friends, that I will not suffer myself to doubt but you will continue to take an active part. There never was a fairer field in the House of Commons for such abilities, and I flatter myself that the exertion of them will complete what is now left imperfect. I need only add to this my best wishes for the entire re-establishment of your health. These wishes are as cordial as the assurances which, with the utmost sincerity and respect I give you, that I am always, Sir,

Your most obedient, most faithful and most humble Servant,

HARDWICKE\*.

*Hon. Charles Yorke to the Lord Chancellor*

[H. 5, f. 155.]

*April 2, 1754.*

MY LORD,

I have just been with Sir George Lyttelton, and read your Lordship's letter to Mr Pitt. He approves it most highly and said, that you had hit the true *medium* in the manner of it, stating the difficulties so as to shew him, there had been no neglect, and yet not too strongly;—allowing much to his own feelings and uneasiness of mind and yet shewing him, that some impression had been made which, by the activity of his own conduct, may be improved, especially as the plan is now settled, and considering the advantages which have been given by the ill judgment of others<sup>1</sup>.

He said that if your Lordship would do him the honour to send the letter under cover to him, he would take care and send one he can trust....He concluded with saying, that of all things he wished this letter to go, which was the best framed to soothe his friend's mind of any that had been writ, and would have the most weight with him....

\* The fact is that this letter, though prudently and skilfully drawn, had no effect with Mr Pitt. His ill-humour broke out the beginning of next session, and he never thought the old ministers were in earnest to serve him. The truth is, one [D. of N.] had no mind to have an efficient minister in the House of Commons, and the other [Lord Granville] knew that it would be drawing the King's resentment upon himself to propose Mr Pitt for the only office which would have satisfied him. H. And see p. 218 *n*.

<sup>1</sup> *I.e.* Fox's sudden resignation of office.

*Mr Pitt to the Lord Chancellor*

[H. 75, f. 175. Phillimore, *Lyttelton*, 471, and *Chatham Correspondence*, i. 103, from a draft in Pitt's handwriting, where the letter is dated Ap. 6th, and differs from that in the text with some slight variations.]

BATH, *April 4th*, 1754.

MY LORD,

No man ever felt an honour more deeply than I do that of your Lordship's letter: your great goodness in taking the trouble to write amidst perpetual and important business, and the very great condescension and the infinitely obliging terms, with which your Lordship is pleased to express yourself, could not but make impressions of the most sensible kind. I am not only unable to find words to convey my most grateful sense of them, but am much more distressed to find any means of deserving the smallest part of your Lordship's very kind attention and indulgence to a sensibility, carried, perhaps, beyond what the cause will justify, in the eye of superior and true wisdom. I venerate so sincerely that judgment that I shall have the additional unhappiness of standing self-condemned, if the reasons already laid before your Lordship continue to appear to you insufficient to determine me to inaction. I cannot without much shame so abuse your Lordship's indulgence as to go back, but for a moment, into an unworthy subject, that has already caused your Lordship too much trouble, and which unavoidably must be filled with abundance of indecent egotism. But permit me to assure your Lordship in the first place, very far from having a doubt remaining on my mind that more might have been done in my favour on this occasion (as impressions have been suffered to remain), that I think myself greatly indebted to your Lordship's friendship, and will ever gratefully acknowledge the kind efforts you was pleased to make to remove impressions so deeply-rooted. But I hope your Lordship will not think me unreasonable, if I conclude, as I do, from the inefficacy of these efforts, in such an urgent want of subjects to carry on the King's business in Parliament and under His Majesty's full sense of that want, that these impressions are immovable. Your Lordship is pleased kindly to say that, some way being made for others, some future occasion may be more favourable to me. Pardon me, my Lord, if I own I am not able to conceive any such future occasion morally possible. God forbid the wants of His Majesty's government should ever become more urgent: such an unhappy distress can only arise from an event so fatal to this country, and which must deprive me of one of the two protectors, whose friendship constitutes the only honour of my public life, that I will not carry my views or reasonings to that melancholy contingency. I might likewise add, I conceive not unreasonably, that every acquiescence to that constant negative, (necessary as I am convinced it was on the late occasion), must confirm and render more insurmountable the resolution taken for my perpetual exclusion. This, I confess, continues

to be strongly my view of the situation. It is very kind and generous in your Lordship to suggest a ray of distant general hope to a man you see despairing, and to turn his view forward from the present scene to a future. But, my Lord, give me leave to say that after having set out, ten years ago, under such general suggestions of future hope, and bearing long a load of obloquy for supporting the King's measures, without ever obtaining in recompence the smallest remission of that displeasure, I vainly laboured to soften, I am come finally to feel all ardour for public business extinguished, as well as to find myself deprived of all consideration, by which alone I could have been of any use. For indeed, my Lord, I am persuaded I can be of no material use under such circumstances; nor have I the heart or the presumption to attempt an active, much less a leading part, in Parliament. The weight of irremovable Royal displeasure is too heavy for any man to move under, who is firmly resolved never to move to the disturbance of Government; it must crush any such man; it has sunk and exanimated me; I succumb under it, and wish for nothing but a decent and innocent retreat wherein, by being placed out of the stream of Cabinet Council promotion, I may no longer seem to stick fast aground and have the mortification to see myself, and offered to others the ridiculous amusement of seeing, every boat pass by me that navigates the same river. To speak without a figure; I will presume so far upon your Lordship's great goodness to me as to declare my earnest wish. It is that, (since I cannot be admitted into a subordinate share in government under His Majesty's principal ministers, upon equal terms with those of no more than equal pretensions), a retreat not void of some advantages, nor derogatory to the rank of the office I hold<sup>1</sup>, might (as soon as practicable) be opened to me. In this view I take the liberty of recommending myself to your Lordship's friendship, as I have done to the Duke of Newcastle. Out of his Grace's immediate province patent offices of this kind arise, and to your joint protection and to that only, I wish to owe the future quiet and satisfaction of my life.

I see with the greatest pleasure the regard that has been had to Sir George Lyttelton and Mr [George] Grenville. Every good done to them will ever be as done to me. At the same time I am persuaded nothing could be done so advantageous to the system. Sir George Lyttelton's ability for set debates and solemn questions is very considerable. Mr Grenville is universally able in the whole business of the House and, after Mr Murray and Mr Fox, is among the very first, if not the best Parliament-man in the House.

I am now, my Lord, to ask a thousand most humble pardons for the length and, I fear still more, for the matter of this letter. If I am not quite unreasonable, in a trying situation, your Lordship's equity and candour will acquit me. If I am so unfortunate as to appear otherwise to a judgment I revere, I hope humanity and

<sup>1</sup> Pitt had been Paymaster of the Forces since 1746.

generosity of nature will pardon failings, of which I am not quite the master and that, I trust, do not flow from any bad principle. Sure I am they never shall shake my unalterable and warm good wishes for the quiet and stability of Government. I can give no better proof of these wishes than by those my heart forms for the long continuance of a health just restored, so essential to those great objects. I have the honour to be with the most respectful and grateful attachment,

My Lord,

Your Lordship's most humble and most obedient Servant,

W. PITT.

*Duke of Newcastle to the Lord Chancellor*

[H. 66, f. 167.] Most secret.

CLAREMONT, *Sept. 1st, 1754.*

[Begins by detailing the intrigues of Fox with the object of forcing his way back into office.] I never had, or ever shall have, a friend whom I honour and love like yourself, and for whose opinion, both in public and private life I have, and now for near thirty years have had, so great a deference. It is upon that principle that I now act, and it is to that friendship that I owe my comfort and my security; and therefore, if we ever differ about persons<sup>1</sup>, or things, be assured that that difference of opinion will have no other effect but to make me examine more closely, and even perhaps doubt my own after examination, if it shall still continue to be contrary to yours. I sometimes wish that you would take up some points with a little more authority and resolution. I think upon the foot of Whiggism, you might have treated Mr Legge, that creature of ours, in his present station, with authority and contempt. But however I am far from being any otherwise uneasy at it, than as I think it might have saved us trouble. To conclude, I know we have as good a body of friends in the House of Commons as ever men had; we have the King, we have the nation at present and we have, and shall have, the House of Lords. I will hope that we shall not suffer three ambitious men in the House of Commons<sup>2</sup> (of which two are at this time guilty of the highest ingratitude to us) to defeat all our good designs for the public, and to convince the King that we can't serve him without their being our masters. I beg pardon for this long letter. I was determined to pour out my heart to you. I have done it with sincerity and I hope you think, with affection and respect, being as I ever shall be,

Unalterably yours,

HOLLES NEWCASTLE.

<sup>1</sup> Fox is meant and perhaps Pitt.

<sup>2</sup> Fox, Pitt and Legge.



*Duke of Newcastle to the Lord Chancellor*

[H. 66, f. 193.]

CLAREMONT, *Sept. 21st, 1754.*

MY DEAR LORD,

I desired Mr Jones to prepare your Lordship by last night's post for a summons to town, which I am very sorry to be obliged to send you, but I hope you will see it is unavoidable. [The expedition to America was the great question to be discussed and settled.] I must now acquaint your Lordship with some very material occurrences, which require the greatest secrecy. I have received an *authentic information* that the Princess of Wales is under the greatest apprehension lest we should make up with Mr Fox, and would do anything rather than that. This you may depend upon, and this must strengthen our own opinion and resolution. The next is, that before I could have time to acquaint the King with what passed at Wimpole and with our plan, His Majesty began, "Who is to take the head in the House of Commons? I know it is Sir Thomas Robinson's place and rank<sup>1</sup>, but he does not care for it." To which I replied—"Sir Thomas Robinson, Sir, will always be ready to give the House the necessary informations; but as to the rest, I believe it must be divided. The Chancellor of the Exchequer<sup>2</sup>, by his office, must lay everything before the House that relates to the revenue, and there is the Secretary at War<sup>3</sup> and the Paymaster<sup>4</sup>." His Majesty then insinuated that those gentlemen might not be disposed, to which I replied, that I should talk strongly to Mr Legge and acquaint him with everything that was proposed; that Mr Pitt was very much displeased with me, and thought that he had been neglected; upon which the King ran out against Pitt and said that I had made him do that for him and put him upon a foot, which enabled him to talk this language and act in this manner; to which I answered that the circumstances of the times and Mr Pitt's abilities were the occasion of it. The King said, "I don't suppose Fox is in good humour; but after the strong assurances he gave me, I don't believe he will enter into opposition."—I said that we had nothing to do but to pursue the plan and measures that His Majesty should approve, and *then*, I hoped, they would not oppose them. H.M. said, "If Pitt acts ill, Fox may have his place,"—and I am persuaded H.M. thinks that would set all right. I told him we were ready to communicate to Mr Fox the plan of the session, not to give him a handle to say that he was not informed. That the King liked, and upon the whole things ended tolerably well, though it is plain His Majesty had been talked to favourably for Mr Fox,

<sup>1</sup> Secretary of State on Fox's resignation.<sup>2</sup> Legge.<sup>3</sup> Fox.<sup>4</sup> Pitt.

and particularly that somebody should take the lead [of the House of Commons]....If we can go on with success, all will be right in the Closet. If we cannot, nothing will make it so....I must now beg pardon for giving you this trouble, which nothing but necessity could have induced me to do. I have several more circumstances to relate to you, but these I will defer till I have the honour and pleasure of seeing you in London. Give me leave to return your Lordship my sincerest thanks for your kind and agreeable entertainment at Wimpole....

Most affectionately yours,

HOLLES NEWCASTLE.

[On Oct. 21, 1754 (H. 66, f. 203) the Duke of Newcastle informs the Chancellor that he has dissipated Legge's ill-humour who, however, was much afraid of the "able and terrible" Fox in the House of Commons, to whom he confessed his inability to reply.]

[On Oct. 24, 1754 (H. 66, f. 207) he writes to the Chancellor] Possibly you may have an opportunity to-morrow to hint something to the King with regard to the state of his affairs here...and the situation of the House of Commons. Your Lordship, in one respect, is the most proper person, as you had the sole hand with the King, in the present arrangement, and in all that passed originally upon it. I have nothing to answer for but, as far as depended upon me, the conducting the King's affairs in the several branches belonging to me, in a proper, unexceptionable and, I may add, successful manner\*.

*Duke of Newcastle to the Lord Chancellor*

[H. 66, f. 213.]

NEWCASTLE HOUSE, Oct. 30th, 1754.

MY DEAREST LORD,

I cannot be easy till I have, under my hand and from the bottom of my heart, begged your Lordship's pardon and asked your forgiveness, in the very just cause of offence which I, though undesignedly, gave you this evening. Nothing ever was further from my thoughts and intentions than the doing it, and I do declare I did not recollect what I had done, till I observed you were very rightly angry with me. For God's sake, my dear Lord, don't harbour a thought of my want of gratitude, or the highest respect for you and regard and submission to your advice. Every action of my life shows the contrary. Every friend I have knows

\* It was singularly unjust and absurd in the D. of N. to lay the whole weight of the then arrangement on my Father, who had acted entirely under his Grace's eye and almost under his direction. The affair with Pitt was not pushed, not to anger the Closet; that with Fox flew off, because the Duke of Newcastle and he could not agree between themselves. H.

it, and every enemy I have sees it with concern. I may have faults, but want of sincerity is not one; and therefore you may believe me, when I assure you that there is not one in the world, who loves or honours you more than, my dearest Lord,

Yours most unalterably,

HOLLES NEWCASTLE\*.

*Duke of Newcastle to the Lord Chancellor*

[H. 66, f. 223.]

CLAREMONT, Nov. 17th, 1754.

MY DEAR LORD...

I had desired Sir Thomas Robinson to wait on your Lordship last night, to have told you the particulars of a very extraordinary conversation, which I had yesterday morning with Mr Legge at his own house, where I went to congratulate him upon the success the day before<sup>1</sup>...I began with applause and congratulation. Mr Legge replied, the day was good, but that he would not deceive me...He came plainly to his old point, that Pitt and Fox must be satisfied, and then made (as from himself only) the following proposal in form; that he had had a discourse with Mr Pitt; that he found he would no longer insist upon being Secretary of State, *since the King did not like it*; nay, that he (Legge) believed now, that if it was offered him, he would not take it, but that *if the King would take notice of him, and he was treated with confidence*, that *that* would do, and that Pitt, (he believed) would then act an active part. But, continued Mr Legge, "Mr Fox *must be Secretary of State*." As to Mr Pitt, I said I was glad to hear he was *now* in that disposition; that when I flung out that very thing to him, he treated it as *words* and *mere amusement*; but that, if he would be satisfied with that, one might endeavour to bring that about. As to Mr Fox's being Secretary of State, I did not know who would advise the removal of Sir Thomas Robinson; but if they did, I was sure the King would not do it. "No," says Legge, "that I believe, but something may be found for Lord Holderness, and Sir Thomas Robinson be made a peer and remain Secretary of State in the House of Lords, and Mr Fox in the House of Commons."—I contented myself with saying only *to him*, that it was too great and too difficult a thing for me to say anything upon, and did not in the least give into it. He said remarkably, *he left it with me to consider*, and repeated his nonsense of uniting by that means *the Whigs*, and of his two dear friends, Mr Fox and Mr Pitt. It is plain to me that this proceeds, first from their seeing that they are *beat*, then from a most thorough combination in the *three* to get at once the House of Commons

\* N.B. Not known what this alluded to. H.

<sup>1</sup> The debate on the Address on November 14, in which Legge spoke in support of the government. *Parl. Hist.* xv. 346.

and consequently the whole administration, into their hands. Mr Pitt is to make this seeming condescension to please the King, and Sir Thomas Robinson is to be kept in for the same purpose, of whom Mr Legge spoke as of one set up purely for a show in the House of Commons at present. My dear Lord, Legge is, and has been, linked against us, and this proves it.

Ever yours,

HOLLES NEWCASTLE\*.

*Earl of Bath to the Lord Chancellor*

[H. 245, f. 62.]

BATH, Nov. 23<sup>rd</sup>, 1754.

MY DEAR LORD,

Your ill health, I dare say, affects everybody more than it does yourself. I am sure that I was so struck with reading in the papers, that your place as Speaker in the House of Lords was supplied by another, that I could not refrain from troubling you with a letter to desire to know how you find yourself.

Your life, I think, is of such infinite importance, that it is impossible not to be greatly alarmed with the frequent return of your colds. Your constitution was once a very good one; but believe me, my Lord, it is the worse for your incessant labours, and requires now a little more care of it. Do not think I flatter you; I have lived too long in the world and in general despise it so much, that I scorn to flatter any one. My honour and esteem for you is real, rooted and unaffected. I should be puzzled extremely to name anybody else for whom they are so. I have long admired your integrity and your abilities, talents that are rare enough in the present age, and which you pay dearly enough for having, by the terrible fatigues you are forced to undergo.

May you long live to be of use to your Country; and I entreat you to think now of nursing yourself up a little, for the sake of the public, more than for your own. Insignificant as I am, I have been taking care of my health and fancy myself better for these waters. About the beginning of next month I hope to have the honour of waiting on you in Parliament. I am, with the greatest sincerity and respect,

Your Lordship's most humble and obedient Servant,

BATH†.

\* N.B. The House of Commons certainly does not go on well without a minister in it, and a pretty good speaker too. The Duke of Grafton jumbled through two sessions without one; but then there was more submission in the majority, and less ability in individuals than in 1754, and no stirring faction at Court. H.

† N.B. This noble Lord always avowed the strongest attachment to my Father, and could he have foreseen all the consequences of his latter conduct at Court would, I am persuaded, [have] been sorry for it. H. [See below, p. 545.]

*Lord Chancellor to the Duke of Newcastle*

[N. 52, f. 449.]

POWIS HOUSE, Dec. 15<sup>th</sup>, 1754.

MY DEAR LORD,

I received the honour of your Grace's letter of yesterday morning, and am very glad our friends do not appear to be offended with what has been done in regard to Mr Fox. Agreeably to what was settled between us, I had an audience of the King yesterday morning, and everything passed extremely well. His Majesty was in good humour and very gracious. I began with referring to what had passed between your Grace and me relative to the transaction with Mr Fox, and that I was sure your Grace had done me justice to His Majesty as to my concurrence with you in facilitating his views in that affair, upon the clear and limited foot on which it was now settled; and then I explained the sense in which I understood His Majesty's intentions, the necessity of adhering to that, and of creating no opinion of a separate confidence with His Majesty independent of his Ministers, and of abiding by the priority declared for Sir Thomas Robinson; that otherwise the most inconvenient consequences would follow to his service. I will not here repeat all the particulars I said on this subject; but the King entered very fully into the whole, and I thought I had all the reason in the world to be satisfied with what His Majesty said on that topic. The King then of himself asked me,—“But, my Lord, what is your opinion about turning out Pitt?”—and then followed his question with his usual description of him, and censure of his behaviour. As to his behaviour, I agreed in the whole, and carried it as high as His Majesty could do. But I said that, as His Majesty did me the honour to ask my opinion, it was incumbent on me to tell it him sincerely, and I would do it with great plainness and at the same time with great duty; that, in truth, I had no personal connection or partiality, that what I should say proceeded only from my great regard for his service, and his future ease and quiet; and after His Majesty had heard me, if he should determine to remove him to-morrow, I would say everywhere that it was right, and not let anybody know that I had been in a different way of thinking. I then went through my whole reasoning upon the

subject, in the same manner as I have done more than once to your Grace, and therefore it would be tedious to repeat it here. The King heard me through with great patience, attention and appearing placidness; but when I made use of the argument, that Mr Fox had made it a kind of condition for himself that, if Mr Pitt should now be turned out, *he* must be excused from taking a personal part against him, the King interrupted and said, "And I assure you has done himself no good by it."...At last the King concluded very calmly, "Well, I was, and am, very angry with him.... He is etc. and deserves etc.; but upon the whole, I believe it is most prudent to let it remain suspended, and not to make any declaration about it..."

This day after Court, I called on the Duke of Devonshire. We talked over the present situation; and his Grace said he understood Mr Fox was very well satisfied with what had been done, and believed he would go on very well. He condemned Mr Pitt's behaviour, but fully declared his opinion against removing him in the present circumstances....Mr Fox has made me his visit to-night in the mixed company, which I usually have at such times. He came alone, and nothing remarkable passed. Upon his coming in, I wished him joy of the late mark of the King's favour, which he received with civility; the rest of the conversation turned merely upon the common business of the House of Commons....

Your Grace will probably be told of a long whispering conversation between the Princess Amelia and me in the Drawing-Room. It all turned on her sister the Princess of Hesse<sup>1</sup> and the letters which came by yesterday's post from Cassel, in which the Landgrave declines agreeing to her coming over to England. H.R.H. said "*We* are satisfied with it, but I am not..."

Ever yours,

HARDWICKE.

<sup>1</sup> Her husband, the electoral prince, had turned Roman Catholic.

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 8, f. 269.]

HAGUE, Dec. 10th, 1754.

...The state of your interior in the House of Commons is a little extraordinary. I am sorry Mr Pitt has thrown away so fine a game into the hands of Mr Fox, but I think he deserves what is likely to happen to him. I shall at the same time be very sorry if the latter, after all he did last winter, should finally gain his ends, but I began to be afraid of it before I left England. As to Mr Legge, he plays a sneaking part and I am indifferent what becomes of him. I rejoice at the King's goodness to his old servants, for without that firmness it would be impossible to carry on the business of the nation at all...

[On December 31, 1754 (H. 66, ff. 251, 254, 259) the Duke of Newcastle complained to the Chancellor of the King's behaviour to him in the Closet, on the subject of the appointments of Groom of the Stole and Lord of the Bedchamber. The King had told him that he should confine himself to the Treasury and said, "You know there is no such thing as first minister in England, and therefore you should not seem to be so."]

*Duke of Newcastle to the Lord Chancellor*[N. 167, f. 27.] *Most private.*

CLAREMONT, Jan. 2nd, 1755.

MY DEAREST LORD,

I have received, almost at a time, your Lordship's two most kind letters. I want words to express the gratitude of my heart for your extreme goodness and affection, and attention to what must so nearly concern me, in determining immediately to go to London, to be upon the spot and see the *carte de pays*. It is from your Lordship that I can have comfort. It is you, and you only, that can procure me ease and redress, and I can never forget your readiness to put yourself in the front of the battle. My actions shall shew my sense of it to you and yours. [Mr Stone is to call upon the Chancellor and relate the whole account of what passed with the King, and is humbly to beg the Chancellor's immediate interposition with His Majesty, as his present position is intolerable. He had not dared to say anything on Joe's subject, but the ill humour, he thought, would operate in his favour.] We don't love to use above one faithful servant ill at once and, after what has lately happened to me for no fault at all, we shall be glad to cuddle with the Chancellor and *vainly* think, or try, by that means to do it. I have constantly observed this in the several marks of *just reprimand*, which we have all in our turns felt...

*Lord Chancellor to the Duke of Newcastle*

[N. 167, f. 63.]

POWIS HOUSE, *Jan. 3rd, 1755.* At night.

MY DEAR LORD,

I received the honour of your Grace's very material and informing letter last night; and after having obeyed your commands in the best manner I was able, am very sorry not to have it in my power to give your Grace a more pleasing account of this day's audience. But such as it was, I will relate it faithfully. At the Levee the King was very civil, in appearing good humour and disposed enough to discourse. My Lord President was there, to whom only he spoke besides myself. His Majesty had on Wednesday at the Drawing-room enquired of my wife, very particularly, when I should come to town, who had answered, not till Sunday. For fear, therefore, he should think I was sent for, or had come to town on purpose, I began in the Closet with saying that I had hastened my return on account of my Lord Montfort's unfortunate death<sup>1</sup>....The King said that was extremely right, and entered very properly into conversation about the causes of this fatal act....After this was quite over, I said, "Sir, I don't mean to importune your Majesty; but as you have been formerly pleased to express so much goodness for my son Colonel Yorke, I should be very happy if, in the succession that may be opened by the great regiment now vacant, he might find your Majesty's favour." To this the King made no manner of answer, good or bad. He stood quite silent, but did not look displeased, but rather with a placid countenance<sup>2</sup>. After we had looked at each other rather more than a minute, the King made the usual sign when he dismisses one. I said not one syllable more about Joe, but instantly said that I thought it my duty to mention to His Majesty that, though I had not seen your Grace, I had received a letter from you last night, by which I found you were under the greatest concern that His Majesty should interpret the opinion you gave him for suspending the disposition of the Groom of the Stole for the present, as proceeding from any other motive than the real one, a desire that it might be further considered by His Majesty. The King grew warm, and said, "The Duke of Newcastle meddles in things he has nothing to do with. He would dispose of my Bedchamber, which

<sup>1</sup> Henry Bromley, first Lord Montfort of Horseheath (1705-1755), committed suicide on January 1, 1755, after squandering his estate. H. 3, f. 292.

<sup>2</sup> Col. Yorke was appointed Colonel of the 9th regiment of footguards in March, p. 149.



is a personal service about myself, and I won't suffer anybody to meddle in. I know what he wanted; he wanted to recommend my Lord Lincoln or his brother-in-law." Here I interposed, and assured His Majesty that I did, in my conscience, believe your Grace did not intend to have proposed any particular person, much less my Lord Lincoln or the Duke of Leeds, and that you had never given me the least hint of it. I then went on to say, that there was one thing, which I thought myself bound to tell him in point of honour and justice, and I knew His Majesty loved justice; and that was, that I might have been partly, tho' very innocently, some cause of this myself; that it was a thing of that nature, that if it should be known, the very person concerned might take it ill, and therefore I must humbly entreat His Majesty not to mention it, for I meant it only for his service. The King hearkened. I then told him all that I had thought about the Duke of Dorset, my reasons for it, which I connected with the doubts His Majesty in his wisdom had formerly thrown out about the Duke of Dorset's returning [to Ireland]. I took care to shew that I thought it might be practicable, but nobody could answer for it; and that, if a change should be thought necessary, his goodness for my Lord Duke was such that he would not disgrace him for obeying his orders, and that His Majesty could not do it without condemning his own measures, and giving up the point of his prerogative; that all this had occurred to me in ruminating by myself in the country upon his service, and therefore I had flung it out to your Grace. The King heard all this at large with attention, but then said what will surprise you:—"Could you think that I would make an old man of 70 my Groom of the Stole?" I replied gravely, that objection had not occurred to me. His Majesty then talked of his Father's having been in the right in resolving to have no Groom of the Stole, and of Sunderland's having forced him to make him etc.; that the Treasury was the Duke of Newcastle's department, and that was business enough etc.; that your Grace had begun at the wrong end, and proposed Lords of the Bedchamber to him before there was any vacancy there. To this I said that the head of his Treasury was indeed an employment of great business, very extensive, which always went beyond the bare management of the revenue; that it extended through both Houses of Parliament, the members of which were naturally to look thither; that there must be some principal person to receive applications, to hear the wants and the wishes and the requests of mankind, with the reasons of

them, in order to lay them before His Majesty for his determination; that it was impossible for the King to be troubled with all this himself. This he in part admitted, but there were some things nobody should meddle in etc. I said it was only a method of laying things before him, and the absolute final decision was in *him*; that it had been always the usage in this Country, and I supposed was so in others; that without it no administration could be enabled to serve him, that ministers bore all the blame and resentment of disappointed persons, and they could never carry on his affairs without having some weight in the disposition of favours. The King said, he had seen too much of that in this Country already, and it was time to change it in some degree. I then asked his pardon for presuming so far; that I only thought it my duty and a point of justice. The King said the thing was over, and he had determined it; "But I know how you are connected (I am not sure whether he did not say linked) together." I answered that it was far from my intention to argue for altering *the thing*, but only to shew him the reasons why a suspension had been proposed; that as to connections I had none, but what were very consistent with his service and tended to the real support of it; and here my audience ended. One thing I forgot that, in the course of what I said, I let him know that such things would materially create appearances and interpretations in the world that, by weakening his administration, might give rise to disturbance in Parliament, and alter that state of ease and quiet, which His Majesty and his servants under him had been endeavouring to bring about; that people would be looking different ways, and every question upon an election might become a contest between different sides of the Court. But the King seemed to despise such fears at present.

I will make no observations upon this narrative. Your Grace sees the whole and will judge fully of it. In short, the humour was as bad as ever I saw it; and in this situation, I did not think it right to revive the affair of Mr Fox, which the King would have been apt to ascribe to my prejudices, as he has called them, and I am convinced it would rather have done harm than good....

What to advise at present, I know not. The affair requires serious and mature deliberation. I will be at Court again on Sunday and Monday, and see how looks and appearances are....

I thank your Grace for your particular account of the circumstances...about poor Montfort. 'Tis a dreadful affair, and

a tremendous example for your fine gentlemen of spirit and pleasure....

Most faithfully and unalterably, my dear Lord, .

Ever yours,

HARDWICKE.

*Duke of Newcastle to the Lord Chancellor*

[H. 66, f. 261.]

CLAREMONT, Jan. 4th, 1755.

MY DEAREST LORD,

I have read over twice, with the greatest attention, your most kind letter, and cannot delay one moment returning your Lordship my most sincere thanks for the very proper and friendly manner, in which you talked to the King upon my subject, though it had not the desired effect....The principle of *confining me to the Treasury* and, I suppose, all of us to our respective offices, seems now avowed; and...I adhere to my opinion that, if Mr Fox had not been admitted into favour, his Majesty would not have ventured to avow that principle in the manner he has done, and own to your Lordship *that it was time to change it in some degree*....I shall take no rash resolution, but do as you shall advise. Humility, submission, obeying and feeding we have seen (though attended with all imaginable success), will not do; there must be a mixture of something else which may *donner à penser*, strike some fear. The branch of foreign affairs has the greatest weight with us....Nothing seems to me so natural as for me to tell Munchausen<sup>1</sup> that, as his Majesty is pleased to confine me to the Treasury, I could not meddle in any foreign affair. It would be contrary to his Majesty's intention, and dangerous for me to attempt...and at once wash my hands of Hessian Convention, Russian treaty and the Saxon and Bavarian subsidies....

HOLLES NEWCASTLE.

P.S. It is impossible for us to do the King's business if things remain as they are. We must, in justice to ourselves, tell the King so....

*Lord Chancellor to the Duke of Newcastle*

[N. 171, f. 484.]

POWIS HOUSE, July 5th, 1755.

The anecdote of Jemmy Grenville's conversation is material<sup>2</sup>, and yet I cannot help suspecting that, either he is not in Mr Pitt's

<sup>1</sup> The Hanoverian Minister.

<sup>2</sup> James Grenville (1715-1783), another brother of the Earl Temple; M.P. for Old Sarum, Lord of Trade 1746-55, Lord of the Treasury 1756-61, when he was appointed Cofferer of the Household. He had declared that "Mr Pitt did not insist upon being made Secretary of State and that the Duke of N. knew it." H. 67, f. 1.

secret, or else he uses the words *confidence* and *regard* in a different sense from what we understand by them. He has had confidence and regard, and thrown it away. It has been assured to him over and over again, and yet declined. Does it not therefore mean some other kind of confidence and regard arising from employment? If this is the meaning of these equivocal words, and yet they mean something lower than the employment of *Secretary of State*, possibly the lot of his quondam friend Fox may serve the turn, and Cabinet Councillor may satisfy *pro hic & nunc*. If so, I think it will be a cheap bargain, provided our master can be brought to it. Tomorrow the Princess of Wales has a Drawing-Room, and Charles will be there. I hope the great man will be in town also, and that may open something. I am very sorry to differ in opinion from your Grace as to a *separate meeting* in the first place<sup>1</sup>. I know what it would end in, and am sure it would have no effect. Otherwise, upon my word, I would not decline it....

*Hon. Charles Yorke to the Lord Chancellor*

[H. 5, f. 169.]

July 7th, 1755, Monday morning.

MY LORD,

Mr Pitt came from your Lordship to me last night, and staid till between 11 and 12 o'clock. I took occasion, from the imperfect hints and intimations, which I had picked up (by chance) of Mr Walpole's negotiation<sup>2</sup>, to lead him into conversation; but he talked in such a complaining manner of the Duke of Newcastle, that I did not venture to propose the meeting, (especially as the suggestion was to come from myself, without authority), till your Lordship had judged on the effect of what he said. In this, if I have been guilty of any error, it is on the safe side; and can be attended only with the inconvenience of a little delay, till another conversation can be had, with some person fit to conduct a thing of this sort. On the other hand, if I had proposed, and your Lordship and the D. of N. should have judged on the result of what fell from him, that no good was to be expected from your joint treaty, or that it was very doubtful whether he would give any answer but a negative, it must have been thought that I had gone too far. I will not trouble you with the detail, till you rise to go to dinner. The principal thing upon which the whole seemed to rest was this:—that in talking with Mr Walpole he had at last waived *the thing impossible* viz. to be at once made Secretary of State; but had desired a pledge of security, which might be the beginning of

<sup>1</sup> The D. of N. had desired the Chancellor to have this first interview with Pitt. H. 67, f. 2. He appears however to have seen Pitt, see below.

<sup>2</sup> Above, p. 196.

confidence; it was that the Duke of Newcastle should take occasion, before the King went, to speak to his Majesty of the state of the House of Commons; to speak of Mr Pitt, as his Grace's friend, and, in the present necessity of the King's service, the proper person to be trusted with the debate of it; to remove ill impressions by talking over the grounds of them with the King; that the D. of N. should likewise interest Lady Y[armouth] for him; that this beginning in his favour might have been followed by her management, during the summer at Hanover. This, he said, had been absolutely refused. That at present it was impossible for him to trust any other proposition than this;—Sir, here is the plan of the King's affairs, *this* is the station (meaning Secretary of State) in which you will be enabled to support them, *these* are your friends, who will join and act with you.

I am [etc.],

Your most dutiful son,

C. YORKE.

[On July 11, 1755 (H. 67, f. 6), the Duke of Newcastle wrote to Lord Holderness in Hanover a letter, to be laid before the King, on the necessity of making new arrangements in the House of Commons for the coming session, when great opposition might be expected to the measures proposed by the administration for the continent, from which it was absolutely necessary to detach the men of ability. The Duke and the Chancellor therefore urged the taking in of Pitt and, if necessary, his inclusion in the Cabinet, making Sir George Lee<sup>1</sup> Chancellor of the Exchequer, and satisfying Lord Egmont<sup>2</sup>. Fox had already obtained what he demanded.]

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 20.]

CLAREMONT, July 26th, 1755.

...As to Mr Pitt your Lordship must judge how we shall get at him. I suppose him now at my Lord Temple's. To send for him up will raise his vanity and his terms, and make a ridiculous éclat. To send Mr Yorke down to him, if some pretence could not be found out, would have near the same effect. But I should think Charles might write to him, that something had happened since their last conversation, which made your Lordship wish to see him when he came next to town, and he might add, that you would be going soon to Wimpole. Your Lordship sees, I propose that you should be singly named in the first invitation to Mr Pitt; and sure that is right. Mr Pitt has kept up a correspondence with your Lordship. He knows, and everybody does, that your Lordship

<sup>1</sup> Sir George Lee, M.P. for Launceston, dean of arches, formerly adherent of Frederick Prince of Wales, and on his death made Treasurer to the Princess.

<sup>2</sup> John Perceval, second Earl of Egmont in the Irish peerage (1711–1770), M.P. for Bridgwater, formerly of the Prince's party, a prominent opponent of the administration and pamphleteer.

had (and very rightly) the principal hand in preventing his being turned out. He has never been near me since he *personally* fell upon me in the House of Commons. His sole complaint, his sole attack, is levied at me; and therefore nothing can be so natural, or so likely to bring this negotiation to bear, as to have the ground first broke by some other person of weight and equal consequence; and no difficulty can arise, since we are sure of the King's consent and of being supported in what we do....

*Lord Chancellor to the Duke of Newcastle*

[N. 173, f. 74; H. 67, f. 34.]

POWIS HOUSE, *Aug. 9th*, 1755. At night.

MY DEAR LORD,

...I am now to the great affair of Mr Pitt, who called upon me at noon, and staid an hour and three quarters. He began by saying that he came out of Buckinghamshire directly to town last night, and that Lady Hester turned off upon the road to Sunning-Hill; that he called upon me in consequence of Mr Fury's<sup>1</sup> having acquainted him that your Grace wished he would see me. From hence I conjecture that he had received a letter from Fury, either before his setting out or upon the road, and that brought him directly to London. I soon entered into matter with him and referred to the unlucky steps of the last winter, professing not to enter into expostulations, which seldom did good. I then told him how sincerely we had laboured for him, and particularly how long your Grace had done so, till he had put it out of our power by his own conduct; that time and temper had softened the resentments occasioned by it, and that I hoped the impressions of ancient friendship would revive. I then showed him fully the impossibility of your Grace's doing anything with the King upon *his last proposal* to Mr Walpole, just before His Majesty went to Hanover, in the humour which then existed to the last. But I took advantage from that proposal to infer that he himself was convinced it was impracticable for him to be put into possession, or to have an absolute promise, of the Secretary's office, and therefore it was necessary to resort to some other scheme to satisfy him. I then showed him, in a proper manner, how we had since jointly laboured in his cause; that I thought we had gained a good deal of ground, that we were authorised to talk to him, and then stated to him the proposition, just as it is, and which I need not repeat, nor the reasoning with which I followed it. He began with making professions,

<sup>1</sup> Peregrine Fury, of the Pay Office.

which were handsome and modest, and expressed great regard for your Grace and me; averred the innocency of his expressions, which had been only construed into an offensive sense; disclaimed any thought of forcing himself into the Secretary's office, was not so weak as to think it was to be done presently, nor did he wish it ever without the King's own inclination to it. All he desired was, that your Grace would tell His Majesty that you were of opinion it would be for his service, if you thought so. He added remarkably enough that, in the present situation of affairs, he did not think that employment a desirable pillow to sleep upon; that the being assured of His Majesty's gracious reception and countenance, as a public mark of favour and confidence, was what he laid more weight upon, as to the personal part, than upon any change of office. Your Grace knows I always thought that would be the most pressed to be explained, and I made that as strong as our powers warrant. He added that it must also be extended to his friends, by which, I suppose, he chiefly meant my Lord Temple<sup>1</sup>. He then went to the conditions viz.:—*that he should take a clear, active and cordial part in support of the King's measures in the House of Commons*, and must be informed what those measures were. I told him that would certainly be done, and I knew of none to be concealed; 'twas all open and above board, the support of the maritime and American war, in which we were going to be engaged, and the defence of the King's German dominions, if attacked on account of that English cause. The maritime and American war he came roundly into, though very onerous, and allowed the principle, and the obligation of honour and justice as to the other, but argued strongly against the practicability of it; that subsidiary treaties would not go down, the nation would not bear them; that they were a chain and connection, and would end in a general plan for the Continent, which this Country could not possibly support; that the maritime and American war would cost six millions a year besides the increase of the Navy debt, and he supposed more troops must be raised for the defence of this island; that by this alone you would run in debt two millions per annum, and an addition of a million more to that could not be supported; that above all he could never give his consent to the mortgaging or funding upon the sinking fund, but, whether in place or out of place, was bound in conscience to oppose it; that if any misfortune should happen

<sup>1</sup> Richard Temple Grenville, Earl Temple (1711–1779), the eldest of the three Grenville brothers, and brother-in-law of Pitt, of whom hereafter.

to Hanover (which he hoped not), it could only be temporary, might be made the quarters of French or Prussian troops for a time, but there was no danger of the King or his family finally losing it, and he thought England ought never to make peace without restitution, and a full dédommagement to the King on that account; that he was for treating the King's German dominions with the same support and regard as even a foreign dominion belonging to the Crown of Great Britain, so situated, should in prudence be treated, and he had rather concur in giving the King five millions, by way of dédommagements, at the end of the war, than undertake the defence of it by subsidies. I endeavoured to show him the absurdity of this notion; could not suppose he was serious in it, and supported the measures of defence and preservation. I then stated to him all I knew or believed about subsidies—the *Hessian* and *Russian*, with the reasons of them, and knew of no intention to go further. He made some objections to the *former*, and also to the great expense of the *latter*, if the requisition should be made; but I think, upon the whole, will not adhere to his objections against these. But he asked, very observably, what do others of the King's servants think of subsidiary treaties—the Chancellor of the Exchequer, Mr Fox and Sir George Lee. If he was willing, he could not stand alone in support of these measures. I made him no other answer but that I had not had any opportunity of knowing their particular opinions upon this point, but could not doubt of their supporting the King's measures. Here I will add, as possibly connected with it, that in a subsequent part of the conversation, he told me that, in a short time, he was to go into Hampshire to spend a week at Mr Legge's. On this point of the proper measures for the defence of Hanover, there was much reasoning on both sides; but at last he said that he must know the sentiments of his friends; that if his own inclination should be to support the defence of Hanover this way, (which he was far from saying it would), yet he must have the concurrence of his friends. My answer to this, in substance, was that I could not suffer myself to doubt but his opinion would have the deciding influence with his friends. It now grew late, and he was just setting out for Sunning-Hill, and said he was much obliged for the trouble I had taken, and would take what I had so kindly opened to him into serious consideration. I told him I was going out of town to stay as long as I could, that he saw by me your Grace's disposition, and I saw his with regard to your Grace personally; why should he not



wait on you? He said he had no manner of objection, and if you would let him have a hint that you would see him, either in the country or in town, he would be at your service. Thus we parted, and if your Grace approves of it, you may convey the hint by the same canal of Mr Fury. I must observe that he said nothing, either by way of objection to, or approbation of, his being called to the Cabinet Council, though I mentioned it more than once and dilated a little upon it. The proper reflections will occur to your Grace without my pointing them out. My own opinion is, that he will appear to close with, or at least not to reject, the proposition, so far as it regards himself *personally*; that he will still go on to make difficulties upon measures. Those difficulties may be real, or they may be made use of colourably to raise the terms for himself, as being the more honourable shape to turn it in. Your Grace will best judge when you talk with him. His manner was easy and frank, and I think pleased with the overture.

May everything happy and agreeable attend your Grace in Sussex. I go on Wednesday morning, and be so good as to cover my retreat and let me stay as long as you can. I am most faithfully and entirely, my dear Lord,

Ever yours,

HARDWICKE.

[On August 12, 1755 (H. 67, f. 38), the Duke asks for advice in detail on the persons and topics he is to discuss at his meeting with Pitt.] I neither can nor will proceed one single step without you. gle

[The same day (N. 173, f. 120), the Chancellor sends the advice sought for by the Duke, and answers all his questions. Pitt probably would not press the Duke on the subject of the appointment of Secretary of State, but if he should, the Duke must promise "so far in case His Majesty should think of a change," to avoid absolutely breaking with him. This was not much, as the King was so determined against it. He was not to take Pitt into his confidence concerning the subsidiary treaties, but rather talk to him upon the restrictions to be placed upon them. As to discussing the subject of Fox, Legge, Sir George Lee and Lord Egmont, he must use his own judgment at the time. Pitt probably knew more than they did and he, the Chancellor, had heard that a House of Commons cabal was being formed against subsidiary treaties, and that Mr Fox was

secretly in it. The Duke might well talk to him on Ireland and the new scheme for the House of Commons, but not too many particulars should be discussed at first. He proceeds:]

As absurd as your Grace and I think Mr Pitt's notion about Hanover, I fear your Grace will find that it has gone further than that gentleman. I have endeavoured to answer all your Grace's questions and will add only my entreaties to be suffered to stay at Wimpole, at least till the end of this month for this turn, and to beg your Grace's protection not to be sent for without absolute necessity....

*Duke of Newcastle to the Lord Chancellor*

[N. 173, f. 241; H. 67, f. 46.]

CLAREMONT, Aug. 22nd, 1755.

[Gives account of a conversation on foreign affairs in the Council with Lord Granville, "who had dined\*," and discusses the progress of negotiations for the inclusion in the administration of Lord Egmont and Mr Pitt.] I propose to see Mr Pitt *by myself* on Tuesday the 2nd and then, if anything awkward passes in our conference, your Lordship, I hope, will set it right on Wednesday and return to Wimpole on Thursday. I cannot say I have much *glee* in seeing Mr Pitt. I know it is necessary and I must do it, but I don't know how to talk to such a man,—who has acted towards me as he has done. I entirely agree to the plan laid down for it by your Lordship, but I hope to be more fully instructed by you the Tuesday morning before our conference....

I am now to acquaint your Lordship with a very extraordinary conversation, which I had last Wednesday with my Lord Granville.... He began by telling me that it was resolved to begin opposition the first day upon subsidiary treaties, that the Hessian treaty must be mentioned in the Speech, and that they would take their handle from this. In this, Mr Pitt and Mr Legge were, I think, supposed to be the principal actors; that Lord Egmont and Sir George Lee would probably concur; that Sir George Lee had talked to him most strongly against the Hessian treaty and the Russian treaty; that he (Lord G.) had justified both, and had talked in support of those measures, for which he had always at all times declared himself, and I think talked as if subsidiary treaties and continental measures were our present system<sup>1</sup>. I told him, he knew the contrary and how strongly we had represented against them. He said that was true, but that *that* was not known, that we had concluded the Hessian treaty etc. All this was to magnify the danger in order

\* N.B. My Lord Granville talked better sense drunk than sober. H.

<sup>1</sup> The Duke draws a proper distinction between the German policy directed to promote British interests or defend Hanover, attacked in consequence of British policy, and a German policy following, as Lord Granville's had formerly, and supporting particular German interests. He made the same distinction to Pitt. See p. 240.

to introduce the remedy. He said Mr Fox had been twice with him lately, that he had told him of the opposition designed to these subsidiary measures, that he (Fox) had hitherto kept himself free, and would do so till the time came nearer; but my Lord Granville gave me to understand very plainly that if Mr Fox was not satisfied, we must expect that he would join the opposition; that Mr Fox told him (forgive me for repeating the idle expression) that *I* must have a *lieutenant*, that he, Fox, was ready to be my *lieutenant*, and to serve me faithfully\*. I ridiculed a little the notion of a *lieutenant*, who was to be *general* over me; I urged the same reasons, which I must always urge upon this occasion, how impossible it was, from *higher connections*, for Mr Fox ever to stand in that light with regard to me.... Sometimes my Lord said, he believed Fox would give up everybody† for me, if he could be well with me; at other times, sure, if he could bring others with him‡, so much the better. I then entered into the possibility of getting Mr Pitt, of securing my Lord Egmont, etc.... My Lord Granville said, whether from Fox or himself, I can't say, that Pitt would not make up *with me*‡; that he and Legge were so closely connected, that the removing Legge was inconsistent with the making up with Pitt; that Legge had got great popularity for not countersigning the Hessian warrant.... Lord Granville asked what answer he must return to Mr Fox. I gave him no particular answer, but shewed by my whole discourse that I could not think of Mr Fox *for my lieutenant*. He said the Parliament would force me to have one, [and] talked more of Legge's consequence and reputation than ever I heard him§.... I do suppose that Mr Fox knows what we are doing with Mr Pitt and my Lord Egmont, and I may also suppose that he fears, (notwithstanding what he says), that it may take place; and in that case Mr Fox may very rightly think he is no more so formidable or so valuable, and therefore in the present uncertainty he employs his friend, my Lord Granville, to make the best bargain for him he can, and my Lord Granville is to represent Fox ready to take part with us or against us; ready to support our measures, whatever they may be, which Pitt, Legge, Egmont and Sir George Lee, for different reasons, will not do.... The messenger tells me he will be at Wimpole to-morrow before dinner. It is not too much to hope that, in the course of Monday, I may be so happy as to receive your thoughts upon every part of this long letter....

[The Chancellor answers on August 23, 1755 (N. 173, f. 259), He is "not at all edified with the extraordinary conversation which his Grace has had with my Lord President.... Fox is alarmed at this treaty with Pitt and Egmont. He therefore represents a

\* Fox was then a Cabinet Counsellor. The word *Lieutenant* was properly enough applied as to the House of Commons. H.

† Meaning the Duke [of Cumberland]. H.

‡ Lord Granville proved a true prophet. H.

§ Legge was not equal to the conduct of the House of Commons. H.

coalition with them to be impracticable, but very practicable and safe with himself." He strongly advises the Duke, however, by no means to "brusque" the overtures from Fox, as the one may forward the other negotiation<sup>1</sup>; and, in his opinion, there was no danger of Fox's joining the opposition to the subsidiary treaties, but more probability of his "running races of merit on the other side."]

*Pitt's account, September 2, 1755, to Bubb Dodington of his interview with the Chancellor, a day or two previously. (Dodington's Diary, 325.)*

The Chancellor told him that he hoped, he would assist them cordially in their business; that the King had, indeed, taken prejudices which were disagreeable, and that steps had been taken to remove them, before he went to Hanover; that they had been the subject of correspondence since; that they had not all the success they could wish *as yet*, but they hoped they would: that the King was very fond of Lord Holderness and Sir Thomas Robinson: but if any accident should happen, it might probably be brought about, in case he would assist them cordially, that they might procure the Seals for him which he so much desired. When the Chancellor had finished, Mr Pitt replied, that he must begin with his last words—the Seals which he so much desired—of whom?—he did not remember that he had ever applied to his Lordship for them: he was sure he never had to the Duke of Newcastle; and did assure the Chancellor, that if they could prevail upon his Majesty to give them to him, under his present dislike, all the use he would make of them, would be to lay them at his Majesty's feet: that till the King liked it and thought it necessary to his service, and till his ministers desired it, he never would accept the Seals: that he knew the King had lately said that he had intruded himself into office: that the Chancellor knew how much he was misinformed, and if he should ask for any favour, it would be that they should inform his Majesty better: the Chancellor had said a great deal, but he desired his Lordship to let him know what he was expected to assist in and what was the work? Why, replied the Chancellor, to carry on the war they were engaged in. He said there was no doubt of his concurrence in carrying on the war, as it was a national war; and he thought regard ought to be had to Hanover, if it should be attacked upon our account.—The Chancellor stopped him short and said, he was extremely pleased that they agreed in their principles, and that both thought Hanover *should be defended*. Mr Pitt desired his Lordship to observe the words he had used, "that regard was to be had to Hanover," and then said all he had said to me [Dodington] before as to our inability to defend it, and the impropriety of the

<sup>1</sup> The Chancellor was right, see *Chatham Corr.* i. 134.

defence by subsidy. The Chancellor said that he understood, that the Commons the last session had tacitly allowed that Hanover must be defended: that in consequence of that acquiescence, there was a subsidiary treaty for 8,000 Hessians in the usual form, and also a treaty for a body of Russians.

But where Mr Pitt laid the greatest stress was on what the Chancellor in reasoning had said; to be sure *those things* (meaning subsidies) *should have their bounds and that*, he was afraid, *they would not be very popular*; and when he was enforcing the necessity of putting a total stop to them, and leaving Hanover to the system and constitution of the empire, the Chancellor seemed to acquiesce in the reason, but told him he must be sensible that talking in that manner would not make way with the King. Mr Pitt still persisted in not giving into the subsidy, and the Chancellor desired him to see the Duke of Newcastle and to talk it over with him. Mr Pitt said that, if the Duke sent to desire to speak to him, he would wait on his Grace, but not otherwise.

*Duke of Newcastle to the Lord Chancellor*

[N. 172, f. 422; H. 67, f. 58.] Most secret.

NEWCASTLE HOUSE, Sept. 3rd, 1755.

MY DEAR LORD,

I never sat down to write to your Lordship, with more melancholy apprehension for the public, than at present. I see nothing but confusion, and it is beyond me to point out a remedy. I had last night a conference of about two hours and a half with Mr Pitt. The whole passed with the greatest decency, civility, openness and seeming friendly disposition on his part. But at the same time there was such a firm resolution, so solemnly declared, both as to persons and things that, if complied with, must produce a total change of the present system, both as to measures and men.

I began by making him a civil compliment of my desire to assure him, myself, of my sincere inclination to act with the utmost confidence and concert with him, which he received and returned very kindly and properly.

I then referred to your Lordship's conversation with him, and to what you had said to him, both with regard to himself and to public measures. To my very great surprise, and what I thought an ill symptom at setting out, he had a mind I should think that nothing material had passed between you, that, indeed, your Lordship had touched upon several points\*, that he could not very well tell what to collect from it; that he looked upon it only as a preparatory conversation to that which he was to have with me, tho' I found afterwards that every single point had been, very properly, laid before him. I then proceeded and began by telling him that the disagreeable situation, in which His Majesty was upon his leaving

\* Pitt meant no explicit offer, except of general confidence, had been made him. His point was to be Secretary of State. H.

England, from the resolution the King had taken not to yield to the earnest entreaties of his servants against his journey, from the mention that had been made of it in one House of Parliament, and the expectation of it in another, that these circumstances had made it impossible, at that time, to enter further into the state of the House of Commons, than to beg his Majesty's leave that your Lordship and I might lay our thoughts before him upon it, at a proper time, and before the next session; that as soon as the event in North America happened, and the resentment shown upon it by France appeared<sup>1</sup>, your Lordship and I took that opportunity to represent to the King in the strongest manner, the necessity of forming a system for the House of Commons, and of engaging and enabling him (Mr Pitt) to take an active part in support of the King's measures there; that his Majesty, in answer, had been pleased, not only most graciously to approve what my Lord Chancellor and I had thus offered to his consideration, but had been pleased also to authorise us to assure Mr Pitt of his gracious acceptance of his service, and of his Majesty's countenance, and also, as a mark of it, that the King was willing to call him to the Cabinet Council. He then began his reply, and with great decency said that the King's countenance was more to him than any other consideration; but that, if it was expected that he should take an *active part* in support of measures, he must be enabled to do it, which he could not think the calling him to the Cabinet Council would, in any degree, do; that the House of Commons was now an assembly of atoms\*, that the great wheels of the machine were stopped, that this could not be thought sufficient to put them in motion; that if nothing was required of him but what related to himself, he would very readily, in his present employment, acquiesce in measures, if he approved them, but that I did not know the state of the House of Commons which, he might say without vanity, he did better than anybody. He then repeated, word for word, the same plan and system which Mr Legge proposed to me, the last year, viz:—that the business of the House of Commons could not go on without there was a minister, (a subordinate one perhaps), which should go directly between the King and them; that if there was any objection to him, he was far from desiring it himself, that any other person might be thought of; but that he could not, and would not, take an *active part* in the House of Commons without he had an *office of advice* as well as of *execution*, and that was the distinction he made throughout the whole conversation, that he would support the measures which he *himself* had advised, but would not, like a lawyer, talk from a *brief*; that it was better plainly to tell me so at first, and repeated the same thing afterwards, or rather applied that to the disapprobation of measures; that it was true they were all a parcel of younger brothers, (an observation, though true, which I own I had never made before), and that therefore they could not pretend that any

<sup>1</sup> p. 257.

\* What he said of the then state of the House of Commons was true enough. H.

one was fit to succeed my brother or Sir Robert Walpole, but that the House of Commons must be in commission.

I took great advantage from that expression, and said that that was what I wished, and that he should be first Commissioner\*. He gave me soon to understand that his meaning was that that person should, and must, have an *office of advice*. I made then some observations upon my own situation, or rather, after he had said that if I could be induced to part with some part of *my sole power*, to that I replied that I knew of no such *sole power*, that my present situation was not my choice, but the King's command. I professed my zeal for the King etc.; but that, if I was disagreeable to the House of Commons, I should, with the greatest duty, desire the King's leave to retire, and that then his Majesty might put one of their own body at the head of the Treasury. He said, that was not at all necessary. He liked a Lord first Commissioner very well; but then there must be a Secretary of State, a man of ability in the House of Commons and a Chancellor of the Exchequer, well supported. He then ran out in the highest encomium of Mr Legge, that ever I heard of any one man, that there was the greatest connection between them two, that ever was between any two men, that Mr Legge had capacity, ability, was the *child of the Whigs*, that that connected them together, that his ill-usage and depression had raised him in the opinion of everybody, and made him the favourite of the House of Commons<sup>1</sup>. He entered into an entire justification of his behaviour in not countersigning the warrant for the Hessian levy-money, and thought it very hard that it should be expected of him without seeing the treaty. I only observed that I believed that that had never been the practice in the Treasury. He seemed to make a difference, in that respect, between the Chancellor of the Exchequer and the other Lords. It is most plain to me that Mr Legge has been, from the beginning, the principal instrument of the whole. Mr Pitt mentioned by name no one man of the House of Commons but Mr Legge.

Before I leave this head of personal consideration, I must acquaint your Lordship that, in describing what was meant by the proposal made to him, I called it a *designation*. He laid hold of the word and said, as I had called it a *designation*, if it was meant for the Secretary's office, he did not desire, or insist, that it should be done immediately, or before Monday. I then was obliged to explain my meaning to be no further than a *designation* of the man of confidence, to whom the King would show his countenance†. He then went as fast the other way, and would make me mean that *that* (viz.—the Secretary's office) was not intended. I told him plainly, (and there we rested it), that our powers went no further,

\* The very thing Pitt in his heart despised, for he meant to be sole minister. H.

<sup>1</sup> Cf. Pitt to his wife, September 25, 1755: "Legge did not sign the Hessian warrants. He is my guide, philosopher and friend. A less ludicrous comfort I should not taste a hundred miles from my lovely, adored wife." *Chatham MSS.* 5.

† Mr Pitt knew that without, an office of *advice* was nothing. H.

than what I had mentioned at first. He said that if my Lord Holderness was so liked by the King, and Sir Thomas Robinson from his knowledge of his business, that they were neither of them to be provided for elsewhere, (and once I think he said, if I would not find out something else for them\*), he gave me plainly to understand, that then there was an end of everything with regard to his taking an active part in the House of Commons.

We then proceeded to measures, and here I must own nothing can equal my astonishment and concern. I explained to him fully the strong representations, which we had made against a general plan for the Continent and a subsidiary system; that I knew of but two, the Hessian treaty and that, which had been long in negotiation with Russia; and I entered fully into the merits of both, and showed upon what principles they were made; that the Hessian treaty had been originally projected for the preservation of the Protestant religion in that Country, for the protection of the King's grandchildren in their religion<sup>1</sup>, for the support of the guaranty given by the King, the King of Prussia and the States of Holland and most of the Protestant Powers of Europe; that the danger, which threatened England and Hanover, could not make such a treaty less advisable, and that, in our present situation, sure, nobody would think that 8,000 Protestant troops might not be usefully employed, either here or at Hanover. He talked with the greatest respect of Hanover; said he would take care, whatever he might do, not to let drop an unguarded expression with regard to Hanover; but he ridiculed extremely the notion of supporting Hanover with 8,000 men, which was too little, if Hanover was attacked, and a most unnecessary expense without it.

I then explained the Russian treaty, showed him that that, if concluded, was the consequence of a four years negotiation, which had been universally approved and had even been mentioned to the House of Commons with approbation, and that I thought it would have an odd appearance, to drop a negotiation at this time, when perhaps there might be more occasion for it than formerly. Here he replied, (and I fancy he has himself said something formerly in favour of this treaty which, indeed, I did not mean or recollect), this measure might in *time of peace* be approved as a measure for preserving the peace, but that at present it was the establishing a subsidiary system, which was destructive to this country, and might alienate the people from the present Royal Family†. I urged (as in my opinion) the use that was, that might, and that would be made of this treaty, (if made), for the preservation of the peace upon the Continent. I told Mr Pitt that, if I was at liberty to show him the representations that had been made against a general plan for the Continent and a subsidiary system, he would not think that we deserved to be reproached with them. And I told him, in general, of

\* He said very truly; they were quite in the D. of N. hands. H.

<sup>1</sup> See vol. i. 656 n.

† N.B. One of Pitt's flummery artificial distinctions. H.



the overtures that had been made to keep the King of Prussia quiet. He treated all I said with seeming respect, and made me at times a sort of compliment upon the rectitude of my intentions, but that those distinctions could not stand one moment when taken to pieces by an able hand ; that this was the universal opinion. What would be the case, he asked, when the Duke of Devonshire should attack the Hessian treaty in the House of Lords, which he believed he would do, and which should be echoed by him in the House of Commons? I told him I knew nothing of what he said of the Duke of Devonshire. He said he knew he disliked it and believed he would oppose it, (and here I find my little friend Legge again)\*. All that I could say upon these measures signified nothing. He however said that, if the Russian treaty was laid aside and the Hessian treaty only proposed, as what should stop all other demands of that kind, he might possibly, (and once he said he would), out of regard to an act done by the King, acquiesce in that as an unnecessary thing, useless in all shapes, but to be submitted to on condition there was no other, but left it with me at last, that no consideration whatever should make him be both for the Hessian and the Russian subsidy, which determined the measure of *subsidies*.

When I found him so very negative, both as to what regarded himself personally and the measures which are, or probably may be, taken, and when he had plainly and invariably given me to understand that without *he had an office of advice*, (which appeared in discourse to mean only the Secretary's office), he would not take an active part, and when he declared most positively *that no consideration* should make him be for the Hessian and Russian treaties, I was determined that his declaration should not be left with me *only*, and therefore proposed to him that he and I might wait upon your Lordship at Powis House on Friday sen-night at night, to see whether we might not explain things more to his satisfaction.

He was extremely polite and cool through the whole, and readily agreed to meet me at Powis House, declaring, however, his resolution, and that he was persuaded things could not be better or clearer explained than I had done it to him. I must end this conversation as I began ; that though upon every point Mr Pitt was as determined and negative as possible, he acted through the whole with great decency, civility, duty to the King, and seeming friendship to me.

Your Lordship, I believe, will agree with me in opinion from this recital (which I assure you upon my honour is a true one, neither aggravated nor lessened in any one particular that I know), that in the present system of administration we must not expect that assistance from Mr Pitt, which would encourage any man of common sense to proceed ; and I am very sure that we shall deceive

\* A bit of my friend old Horace [Walpole] then much discontented [on account of the delay in granting him his peerage]. H.

ourselves, if we flatter ourselves with any hopes of an alteration, except the King is pleased to make him Secretary of State, whereby he very plainly and honestly told me he should expect to have *voix en chapitre*, both as to the recommendation to employments and the determination of measures; and he urged the want of a House of Commons minister in the administration to be the occasion of the subsidiary treaties, now supposed to be entered into; for that such a minister, by his representations, would have prevented them.

This being the fact, it is now the duty of us all to consider what advice to give the King upon his coming home. I will very freely fling out to you my thoughts for your Lordship's consideration. I have seen nobody but Sir Thomas Robinson, and have talked a little in general to him.

There are, in my opinion, but three measures to take—the first I most incline to:—

First, as the present difficulty arises from a combination in the House of Commons, thus circumstanced, originally confined to Fox, Pitt and Legge, to which my Lord Egmont and Sir George Lee have in some measure since acceded, and from which Mr Fox has in some measure of late receded, this combination is against me, that is, against anyone in my station not in the House of Commons. The most natural remedy, the most easy way, would be for me to retire and the King to put Mr Fox at the head of the Treasury. Business would go on so for this session, for Mr Pitt could not object to a measure, which he himself had brought about and was founded upon his principles. I am serious in thinking this the rightest measure of all, the best at present for the King's measures, possibly the most agreeable to himself and, I am sure, the most honourable, the most easy and the most agreeable to me in the present circumstances.

The next way, for me to continue where I am, Mr Pitt Secretary of State, Mr Legge Chancellor of the Exchequer. Whether this is in any shape practicable, I leave to your Lordship and all who know the King, to determine.

The third and last then is, to accept Mr Fox's proposal, made by my Lord Granville, viz:—to take Mr Fox in, to do the business of the House of Commons. In this case there must be an entire confidence in him. His great Protector [the Duke of Cumberland] must say what part he would act; and the great Protector of the others must be told what part they must act. The Duke of Devonshire must explain himself and my Lord Hartington also. Mr Fox must engage to act with whatever Chancellor of the Exchequer the King would appoint; for a new one upon this system there must be. Dodington perhaps should be taken in; the Attorney General [Murray] should be brought to take an active part and all our friends of the law. In short a system should be formed, in which every one in both Houses and every member of the Cabinet Council should previously engage to take their share, and every person in employment should be required to assist.

I am far from saying that this would do. I see almost insurmountable difficulties in every proposition but the first, and to that therefore I revert as infinitely the most preferable. I have laid before your Lordship the facts. I have also suggested every remedy that occurs to me. I hope you will weigh them all with your superior judgment and prudence, that you would be persuaded that I neither think with passion, resentment or ridiculous false modesty. I am open to conviction upon every point, and therefore I beseech you, from your love to the King, your concern for the quiet and peace of this country and from that friendship, which has now subsisted between us for upwards of thirty five years, and has constantly showed itself by a reciprocal unlimited confidence and regard, that you would let me have your thoughts with the same freedom and unreservedness with which I give you mine; and if there is any part of your opinion which you wish I should keep to myself, I give you my word that I will do it; for otherwise I should not deserve that unlimited confidence.

You know the deference I shall have to your opinion; I had almost said I should be determined by that alone. It is in these trying circumstances, where an able and honest friend and fellow-labourer can best serve his friend, his King and his country. In all events I think, we should observe the utmost civility to Mr Pitt, keep very secret what has passed with him, and if we find at our meeting (as I apprehend will be the case) that he is immovable, I think we may say that, if his declining makes it necessary for the King to make use of other hands, he can now have no objection to it. And whatever should be finally resolved upon, should not be known to any party concerned or to anybody but ourselves, till Mr Pitt has confirmed to us his determination.

I am, my dearest Lord, with most unalterable affection,

Ever yours,

HOLLES NEWCASTLE.

P.S. To make my narrative perfect, I must add a circumstance or two which I had forgot. In talking against the Hessians, Mr Pitt said they were of all others the worst, that they would not fight when they were in Scotland, and could we have any hold over the troops of a Prince, who had changed his religion and under whose influence these troops would be? and in talking about Hanover, I avowed the measure and the necessity of defending it if attacked, (as in this instance), for English causes, but that that defence should be separated from the object of the Continent. Mr Pitt said that was impossible, and would understand both Russian and Hessian treaties as singly entered into on account of Hanover, and what disservice must it do the King and his Royal Family, when the people of England saw that they could not enter into a war for the support of their own rights, without exposing themselves to such consequences? And he repeated what he said

to your Lordship, that Hanover could only suffer by being perhaps for a time in the possession of some other Prince, and that even an indemnification would be better given afterwards than such expenses entered into before hand.

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 173, f. 442; H. 67, f. 71.] *Most secret.*

WIMPOLE, Sept. 4th, 1755. At night.

MY DEAR LORD,

I begin, as I ought, with my most sincere thanks for the most distinct, clear and able narrative of so long a conversation, that ever I received in my life, and which gives me the spirit and connexion of the dialogue with the greatest perspicuity. The first observation which naturally occurs, at least to me, is that Mr Pitt is not mended by the counsels of his friends since his interview with me. On the contrary, he is worked up to a higher pitch, and whether the miscarriage upon the Ohio<sup>1</sup>, which is a subsequent event, may not have made him think himself the more necessary, your Grace, who saw his manner, can best determine. As I agree with your Grace that the wrong turn, which he set out with giving to my conversation with him, was a bad symptom, so I think it is some proof of what I have been now saying; for as he meant to abate from it in what was to follow with your Grace, he might think it necessary not to admit what had then passed in its full strength. It is plain by your letter that no new proposition or topic was started, though several were much better illustrated and enforced. My next general observation is that no weight is to be laid upon many of the personal things which he flung out, because it is plain to me that they did not proceed *ex animo*, and he could not be in earnest in them. I will only instance in two of them. Could he really think that the Duke of Devonshire would openly attack the Hessian treaty in the House of Lords, and give Mr Pitt an opportunity of being his Echo on that subject? 'Tis what I have no conception of, and could be meant only to scatter terrors. The other instance of this nature is Mr Legge. I am sure he has not that opinion of the man which the high encomium, your Grace has related, imports. I know he talked otherwise of him formerly, and rather in a light of contempt. His meaning, though double, was in my opinion, no more than this, partly to show the connexion between them as something more solid and important than

<sup>1</sup> p. 258.

it is, and partly to rally and tease à little, under a civil disguise, since he knew very well that it would not give your Grace the greatest pleasure to hear a panegyric upon that gentleman. 'Twould be infinite to run through all the false reasonings and partial colours of his discourse; to make all the observations which his political system would suggest, or to give all the answers which naturally occur to his ill founded objections, would exhaust the language, or at least make a longer letter than that, which your Grace has had the patience to honour me with. I shall therefore confine myself to the two points that appear to me fundamental, and to make the hinge on which the whole turns.

The first is the *general* principle, that there must be a minister *with the King* in the House of Commons. The other is the *personal* one, that Mr Pitt must be Secretary of State. They are neither of them new. The former we heard much of, even before this Parliament set down, but notwithstanding all the awkwardnesses of the last session, none of us thought that the principle made much way in general. 'Tis espoused by a few who are, or would be, leading men there, and they sound it high in order to make it popular. When they say a *subordinate minister*, 'tis what they don't mean; and *younger brothers* as they are, their meaning is to be in the place of Sir Robert Walpole or Mr Pelham. If the King would give sufficient confidence and authority to his first minister to confine it to this *subordinate* character, possibly there might be no great hurt in it; for I have long been convinced that, whoever your Grace shall make use of as your first man and man of confidence in the House of Commons, you will find it necessary, if he be a man of reputation and ability, accompanied with the ambition naturally incident to such a character, I say, your Grace under these circumstances will find it necessary to invest him with more power, than from the beginning you thought fit to impart, either to Mr Legge or Sir Thomas Robinson.

As to the *personal point*, that he, Mr Pitt, must be Secretary of State. The tone is much higher, and the language on this topic much stiffened, since he talked with me. I presume that either from his own reflection, or the suggestions of those he calls his friends, he has brought himself to think that, if he does not push that point now, whilst he feels he is so much wanted, he gives himself up for ever. And here it is plain, (and the oftener I have read over your Grace's letter, the more I am convinced of it), lies the great *chasm* in your conference and the great defect in that satisfaction,

which he wished to find in it. When I say *defect*, I mean only with regard to Mr Pitt and his views; for whether it is fit for your Grace to supply it or not, is a different question. He certainly wanted, (without directly asking for it), to draw an assurance from your Grace that you would press and make a point of it with the King, that he should be made Secretary of State within some given period, *not before Monday*, but suppose at the end of next session. This he tried first to do with explaining your word *designation* to mean *designation* to the Secretary's office, and following it with saying that he did not desire or insist, that it should be done immediately or before Monday. When you explained your word *designation* in a more general and lower sense, he resorted to another scheme to draw out the same assurance by interpreting it, *that it was not intended that he should ever be Secretary of State*, and this he meant to pin down upon your Grace by adding, *if you would not find out something else either for my Lord Holderness or Sir Thomas Robinson, there was an end of everything with regard to his taking an active part in the House of Commons*. And your Grace resting it, that our powers went no further and stopping short there, without making any declaration or professions from yourself, he took as a negative\*. You then proceeded to measures, and I take it for granted he grew more reluctant and adversary upon every one of these points, from his disappointment in the principal object.

This brings it to a point, on which your Grace and I have frequently talked together:—"Whether you can think it right, or bring yourself to declare to him, that you really wish him in the Secretary's office, and will in earnest recommend him to the King on that foot." 'Tis my opinion, though I may be mistaken, that if you would think fit to do that, he would close and take *his active part* immediately, even without any present promise or declaration from his Majesty. But without this, he persuades himself, or is persuaded, that nothing is sincere at bottom, and that the intention is to have the use of his talents without gratifying his ambition.

In my answer to your Grace's letter from Haland†, I told you

\* This was the real truth and happy would it have been for the Duke of Newcastle's system, had he then made a point of making Mr Pitt Secretary of State, with proper powers, before Minorca etc. H.

† I wish that letter had remained. It is only amongst the Duke of Newcastle's papers, and the Duchess very kindly refused me the sight of them. H. [See above, August 12.]

my thoughts upon this question, agreeably to what I had had the honour to mention to you more than once before. Your own heart can only dictate to you whether you should do it or not. My poor opinion is that, without it, all further meetings and pourparlers with this gentleman will be vain; not that I mean to decline the meeting, which your Grace has appointed for next Friday sev'n-night, for I will certainly obey your commands, if I am well.

I come now to the conclusion your Grace has drawn from the whole, and very properly divided into three propositions of measures on which I will, with great frankness as becomes me to such a friend, tell you my opinion, though I must premise that, as there is to be a further conference, no final opinion ought in strictness now to be formed.

1. The first is *to retire*, and for the King to put Mr Fox at the head of the Treasury. As to *retiring*, I am ready to take my part. I agree with your Grace that it will be most easy, quiet and safe. But there are many things to be simplified and considered in it, before your Grace can take that part. What can it be put upon? Will it not be called deserting the King and the nation in this time of public difficulty and distress? Perhaps be called *another resignation* by way [of] force upon the King to take in Mr Pitt, which Mr Pitt disclaims now, and has done so in the former instance\*. The world will be apt to say it is a *bassesse* in us to propose Mr Fox to the King for his Minister; that if his Majesty won't enable your Grace to go on without him, let him choose for himself; and yet I agree with your Grace that this is effectually the most desirable part.

2. The next proposition is for your Grace to continue where you are; Mr Pitt Secretary of State; Mr Legge Chancellor of the Exchequer. Whether this is practicable with the King depends, I think, upon the necessity of his affairs, and I agree that nothing else will induce him to it. As to your Grace's own situation in that case, it will be the same, in my apprehension, as you would find it with any other man of ability and ambition in the House of Commons. Pitt has it to say that we originally agreed to it in the case of Mr Fox, and he himself threw it away. As to the tacking to this Mr Legge's remaining Chancellor of the Exchequer, I don't imagine that would give you much trouble; for I cannot help being

\* N.B. My Lord in his cooler hours disapproved those resignations in '46. H.

persuaded, notwithstanding the boasted connection, that Mr Pitt would take the *first* in full payment. The latter will be no condition *sine qua non*\*.

The 3rd proposition—to accept Mr Fox's proposal made by my Lord Granville. Your Grace has fully explained it and, if it is to be given way to, I entirely agree in the terms and conditions, which your Grace states as necessary to be annexed to it. I can add nothing to it but that, if it is thought right, I will be no obstacle. I will only state the difference between Mr Fox and Mr Pitt in respect of yourself. Mr Fox has a party in the House of Commons and a great protector and support in Court, besides the personal inclination of the King. Mr Pitt has no party of his own there, no support at Court, and the personal disinclination of the King. He must therefore probably depend, at least for a good while, upon those who bring him thither. Your Grace knows also how disagreeable the uniting with Mr Fox will be to one branch of the Royal family<sup>1</sup>, and upon these two points I leave it.

You need not, my dear Lord, have summoned me in so solemn a manner to give you my opinion. That honourable connexion and attachment to your service, which is the pride of my life, has now subsisted for 35 years, and those many obligations by which you have made me yours, demand it from me†. I am sure your Grace does not doubt the cordiality of my attachment under all circumstances, nor suspect that I will ever forfeit that valuable character of *friend*, with which you have the goodness to honour me. I am sensible that, in such cases as this, my opinion does not deserve all that weight, which the sentiments of others may do. But here you have it, such as it is at present; and if anything further occurs, I will be ready with it when I come to town. Your Grace is so good as to say that, if there is any part that I would have you keep to yourself, you will certainly do it. My real opinion is that upon such subjects, so personal and so delicate, the whole should be kept to ourselves, and our letters not shown to anybody.

I have writ this letter under great interruption and, though I had begun it on Thursday night, have been forced to detain your messenger till Friday near four o'clock....I propose to be in town

\* N.B. I think he would not then have given Mr Legge quite up, though I am clear with my Father that he did not think highly of him. H.

<sup>1</sup> The Princess of Wales.

† N.B. Surely my Father put those obligations much too high. H.



on Thursday evening, and in person to repeat the assurances of my being, with the most inviolable affection,

My dearest Lord,

Ever yours,

HARDWICKE.

[On September 6, 1755 (N. 174, f. 5), the Duke of Newcastle, in answer to the Chancellor's letter of the 4th, after expressing his thanks for the latter's support and advice, gives it, as his own opinion, that it would be useless to propose Pitt to the King as Secretary of State, and would only embitter and render uneasy their own situation. He has had further information concerning the attitude of Leicester House, and has therefore determined to visit Lord Hardwicke at Wimpole on Tuesday and Wednesday to decide what proposal shall be made to the King, who was expected home on Friday.]

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 80.] *Secret.*

CLAREMONT, Sept. 28th, 1755.

MY DEAR LORD,

...The Princess returned earlier, than was intended, from a party of pleasure on Thursday night, and immediately sent for C[resset]<sup>1</sup> and began thus with him. "Eh bien, voilà Fox Secrétaire d'État<sup>2</sup>."...She then went on, "This has been designed this twelve month; I have been mal traitée."...Cresset says she was in a violent rage, and spoke with the greatest firmness and resolution.... "I had obligations to the Duke of Newcastle, but now nous sommes quittes."...In short, rage and fury appeared through the whole.

Ever yours,

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 174, f. 264; H. 67, f. 85.]

WIMPOLE, Sept. 29th, 1755.

...I always expected that this advancement of Mr Fox would meet with resentment there [at Leicester House]. When reason shall resume the place of passion, the answer to it will be heard, and that will be that this great Lady, with her friends, made this

<sup>1</sup> James Cresset, Secretary to the Princess and a great favourite. He was related to the Royal Family through Eléonore D'Olbreuse, Duchess of Zell, grandmother of George II. Walpole's *Letters*, iii. 47.

<sup>2</sup> The King had rightly named the cause of the Princess's intense dislike to Fox, which was his opposition, in the interests of the Duke of Cumberland, to the Regency Bill. H. 67, f. 100.

measure *unavoidable*; for if they would have done what was in their power to influence Mr Pitt to accept what my Lord Hartington says ought to have satisfied him, this had never happened.... H.R.H. knows, from what both your Grace and I said to her in the summer, that our intention was declared to bring in Pitt, Egmont and Lee. She knows it has been tried in the only practicable shape, and that she has at least acquiesced in their *negative* to that arrangement and (what made it still more impracticable) to public measures\*.

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 90.]

CLAREMONT, Oct. 4<sup>th</sup>, 1755, at night.

...The King told me yesterday, "I am glad Abreu<sup>1</sup> has wrote to all word that Fox is to be subordinate to you. I told Fox that the ministers had brought him in, that if he did not behave well (or to that purpose), they would quarrel with him and so should I too." Fox is not popular, of which I gave H.M. some strong instances.... These accounts, most true as they are, do good; and will hinder, I hope, any mischief from the necessary step which we have taken. I must do justice to Fox to say that hitherto he acts openly, fairly and I think cordially. I have had two long conversations with him, and am very well satisfied with both. He has recommended only five members of the House of Commons to be provided for.... He is very reasonable about them and only desires that they should go *pari passu* with others†. Many of our friends are not pleased with what has been done, but upon talking to them, they must be convinced of the necessity of it.... Mr Pitt came to town this day. He will probably be at Court to-morrow. I spoke to my Lady Yarmouth about the King's speaking to him. She said "He will not do it. He told me at Helvoetsluys 'that he would not do such a *bassesse* to a —,' and I don't think," says my Lady, "that what has happened since will encourage him to do it." Your

\* N.B. How comes no notice to be taken of Lord Bute in these letters. He had then the influence at Leicester House, and when I came to town in November, I was told it by my brother John, who had it from Fox's friend Hamilton. H. [Probably William Gerard, known as "Single speech Hamilton" (1729-1796), M.P. for Petersfield. He was connected with the Chancellor's family, but had declared himself of Fox's party in the spring, and in 1756 was, on the latter's recommendation, made a Lord of Trade. In 1761 he was made Chief Secretary for Ireland, and in 1763 Irish Chancellor of the Exchequer.]

<sup>1</sup> Spanish minister in England.

† The Duke of N. was always in raptures at first with a new friend, and angry with him in a week. H. [Cf. Walpole, *George II*, ii. 43-4, "His...terms were moderate for, not intending to be more scrupulous than he knew the Duke of Newcastle would be, in the observance of their articles of friendship, he insisted on the preferment or promotion of only five persons."]

Lordship sees by this how impossible it was to get over that prejudice. In talking to her Ladyship about the Princess and the hopes that Munchausen<sup>1</sup> had, that all would be well, she said "Je n'en crois rien. Elle est en mains qui ne veulent pas la permettre," and then with a smile "We both know what we mean, though neither of us will speak\*."

[On October 12, 1755 (N. 175, f. 13 ; H. 67, f. 97), the Duke of Newcastle dispatched a long letter to the Chancellor on the great perplexities now besetting the administration, arising chiefly from the Princess of Wales's party who, however, according to Lord Egmont, was prepared to give up her opposition in return for favours to her servants and further provision for her children.]

*Lord Chancellor to the Duke of Newcastle*

[N. 175, f. 30.]

WIMPOLE, Oct. 13th, 1755.

...The conduct of the Court at Kew is the most surprising of all, and those who have instigated it have the most to answer for. 'Tis what no views or resentments of ambition can excuse....Cannot people be made sensible of the danger and iniquity of such a measure, especially in a time of such public danger and distress, which requires the united assistance of all hands and hearts.... I agree with Lord Egmont in some parts of what he proposed by way of complaisance to the Princess of Wales. Gratifying one or two of her servants might be done, and I think some additional provision for her younger children would be very right in itself. *If everything would come right* at such a price, 'twould be ridiculous to refuse to give it, and I am very sorry to see the King so negative on that subject. The increase of age of the children may make it necessary, and I think his Majesty might do it without making a precedent for any other of his family. On this occasion I don't wonder that the King should reflect on the plan of the Regency Bill, but I wonder that Her Royal Highness does not<sup>2</sup>. However I cannot persuade myself that that will have much effect upon his mind, as to ourselves. Your Grace named my Lord Bute in a very proper manner, and I heartily wish you could find ways and means to come at him. The Scotch are not used to be impenetrable to such motives. He was not only a servant of her husband's but,

<sup>1</sup> Hanoverian minister.

\* Meaning Lord Bute, but why all this mystery. The King should have spoke himself to the Princess. H.

<sup>2</sup> *I.e.* it is not surprising the King should, in consequence of the Princess's conduct, regret the power given to her by the Regency Bill.

I think, it was said at the time, that she brought him into that service....

The conversation between Pitt and Fox is curious and quite in *the style*<sup>1</sup>....Most faithfully and unalterably yours,

HARDWICKE<sup>2</sup>.

*Hon. John Yorke to Lord Royston*

[H. 26, f. 125.]

LINCOLN'S INN, Oct. 28th, 1755.

...Mr Pitt is very busy, is particularly well received at Leicester House and his late *friend*<sup>3</sup> hardly spoke to. The great person there<sup>4</sup> seems vastly uneasy, and has looked very ill of late. By means of his old emissary Glover<sup>5</sup> he is endeavouring to stir up a clamour in the city against subsidies, from whence Lord Egmont says we are to have petitions against them. That will be going very far and is new. Lord T.....e<sup>6</sup> and he have been lately at Woburn with intention to stay a week, as the story goes, but met with so cold a reception that they packed up their cloak bags and went away the day after they came. I find Mr Fox's circular to his friends, in which he uses an expression we heard repeated, is spoken of pretty freely, as not being quite so artful as might have been expected<sup>7</sup>....

[On Nov. 3, 1755 (N. 175, f. 324), the Chancellor gives an account to the Duke of Newcastle of an interview, which he has had, by his desire, with the Duke of Bedford. He found him in

<sup>1</sup> The Duke of Newcastle had related (f. 20) on Lord Granville's authority, "Pitt has been with Fox and told him, 'We Sir, stand now upon different ground; we were upon the same circumvergent ground but now, Sir, you have done what was right for you and I must do what is right for myself.'"

<sup>2</sup> Further on the same topic, H. 67, f. 108.

<sup>3</sup> No doubt Sir George Lyttelton, who now joined the government as Chancellor of the Exchequer.

<sup>4</sup> Lord Bute.

<sup>5</sup> Richard Glover (1712-1785), the poet, author of the unreadable *Leonidas* and *Athenaid*. He dabbled in politics, as an adherent of the Prince of Wales, posed as a patriot, wrote the ballad *Hosier's Ghost*, and became later a supporter of Bute and Leicester House; M.P. for Weymouth in 1761; left anonymous *Memoirs*, in which he shows himself an extremely unintelligent spectator of the events of his time and an inaccurate narrator; see his ludicrous criticisms of the Chancellor and his comment upon the struggle for the New World: "The right of these useless lands was not a question worth resolving, in my estimation." p. 59.

<sup>6</sup> Probably Lord Temple.

<sup>7</sup> It is printed by Walpole, *George II*, ii. 65-66. It began: "The King has declared his intention to make me Secretary of State and I, (very unworthy as I fear I am of such an undertaking), must take upon me the conduct of the House of Commons." According to Walpole he had in it so injudiciously betrayed his own aspirations that the letter gave general offence, and it was the subject of a debate in the Commons on November 21.

good humour, disposed to support the two subsidiary treaties<sup>1</sup>, against divisions and expressing no ill-will or jealousy of the Duke.]

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 127.]

COCKPIT, Dec. 17th, 1755.

...Allow me to say, my dear Lord, that I never was so much hurt as with your reproach yesterday which, I declare, I did not deserve. Your Lordship is extremely mistaken, and that all the world knows, if you can imagine that I value any man a hand-width part so much as I do you, or that I would prefer any one's recommendations to yours. Your recommendations are always orders to me and I never did, or will, dispute them, when your Lordship insists upon them. You must be sensible that you never insisted, though very much wished, as I did, that Lord Sandys might have one of the vacancies....

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 131.]

NEWCASTLE HOUSE, Dec. 20th, 1755.

MY LORD,

The enclosed papers will show your Lordship how little reason my Lord Sandys had to refuse, or be offended with, an offer of an employment which brings in clear 2600 per ann. paid weekly in London. But the very severe expressions, made use of last night by your Lordship, affected me so sensibly, that I immediately took a resolution to procure an employment for my Lord Sandys to his Lordship's satisfaction, or to retire from business; for I will not serve one moment after I am *convinced* that I have lost the least degree of that confidence, good opinion or affection with which you had honoured me for five and thirty years. I have therefore desired Mr Fox to induce my Lord Sandwich or my Lord Berkeley of Stratton to accept the Irish office....As soon as I have either of their answers, I shall acquaint your Lordship with them, and am with great respect, my Lord,

Your Lordship's most obedient, humble servant,

HOLLES NEWCASTLE\*.

<sup>1</sup> He supported them in the debate in the Lords on December 10, 1755, when Lord Temple violently opposed them. Walpole, *George II*, ii. 104; cf. *ib.* 46.

\* N.B. Lord Sandys was a useful man in the common business of the House of Lords; in other respects his importance was of little moment, nor do I see why my Father made such a stir for him. H.

[Samuel Sandys, first Baron Sandys of Ombersley (c. 1695-1770), formerly M.P. for Worcester and author of the Place Bill of 1734, which however later, in 1742, when Chancellor of the Exchequer, he opposed; was succeeded by Henry Pelham in 1743 and was raised to the peerage and made Cofferer of the Household; Treasurer of the Chamber 1747-1755, and a warden of the King's forests 1756. On the Chancellor's resignation in November 1756, he was appointed Speaker of the House of Lords.]

*Lord Chancellor to the Duke of Newcastle*

[N. 176, f. 357.]

POWIS HOUSE, Dec. 20th, 1755.

MY DEAR LORD,

I received the honour of your Grace's letter whilst I was at dinner with company, otherwise I should have sat down to have answered it immediately. I am very sorry that anything I said last night in the coach should make such an impression upon your Grace, as you are pleased to describe. I might say it hastily but it proceeded\*from the fullness of my heart, not arising from the object in question, but because I thought I discerned that the affair had been treated with a certain indifference, and that indifference was ascribed to a want of zeal in pressing the affair by me which, I own, hurt me the more. If in this I was mistaken, I heartily ask your Grace's pardon for what passed ; but I own I could not bear with patience any symptoms of that kind in your Grace, or what appeared to me in that light, after a friendship which had been my pride for five and thirty years, and after the most faithful and invariable attachment to your Grace for as long a duration, from which I had never deviated, however unprofitable to you it may have been. But if in all this I was under an error, *id nec dictum esto*....

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 133.]

CLAREMONT, Dec. 28th, 1755.

...I now come to our domestic affairs, and there the King talked very freely and very warmly, pretty much in the old strain, the necessity of doing something, the extravagant behaviour of Leicester House, the taking no notice of anybody who had received employments from the King, the open countenance given to those in the most violent opposition etc....I have reserved for a note *apart*, to be *burnt* immediately, to acquaint you by the King's order with a proposal of his Majesty which, you will easily see, is impracticable and dangerous, viz: that the two Houses should address the King to remove from the Princess all persons who have endeavoured to create misunderstandings in the Royal family, by which H.M. means particularly my Lord Bute. I told the King that it would be expected that some proof should be made. H.M. said, "Impeachments have often been upon *public fame* only." The thought must drop of itself. I could not avoid mentioning it, and I wish you would say a word or two in answer, in a separate paper which I will *burn* also as soon as I have read it\*.

\* N.B. Papers desired to be burnt are generally kept. H.

## CHAPTER XXIII

### THE WAR 1754-6 TO THE LOSS OF MINORCA AND THE FALL OF THE MINISTRY

WE now emerge from the devious courses and obscure windings of the petty intrigues which fill so large a space in the annals of the time, upon the broader scene of the great international struggle, on the issue of which depended the whole subsequent development of the British Empire and, to a large extent, the history of the world.

It had been evident for some time that peace between the rival nations existed only in form. In the New World the Treaty of Aix-la-Chapelle had scarcely interrupted the course of hostilities. In the summer of 1754 the French succeeded in erecting the strong fort of Duquesne on the Ohio, expelling the English, while George Washington, who came up with assistance, was defeated and taken prisoner<sup>1</sup>. On September 21 the Chancellor was summoned to London to deal with the crisis which had arisen and decide on measures of reinforcement. The ministers however were handicapped in their military plans. The policy of the Duke of Newcastle and the Chancellor, which was justified by the evident reluctance of the French to declare war<sup>2</sup> and by the situation in Europe—where the Austrian alliance was lost, the league with Prussia uncertain, Holland wavering, Spain neutral only if not incensed by British encroachments in the New World, Hanover defenceless and if conquered to be held as a pledge by the enemy for acquisitions in America—was to avoid an open rupture, to concentrate all the national strength on the contest in the Colonies and to send out reinforcements with as much secrecy and as little ostentation as possible. In the 'King's Speech

<sup>1</sup> H. 282, f. 162.

<sup>2</sup> R. Waddington's *Louis XV*, 185-7. They were actually at this moment making informal proposals for peace to the Chancellor and through other channels.

on opening Parliament on November 14, 1754, the Chancellor studiously avoided any mention of hostilities<sup>1</sup>. This policy, however, met with strong opposition, at first more secret than open, from the Duke of Cumberland and Fox, who employed all methods to hurry the country into a declared and general war with France, in which event, their influence, as founded on the army, would certainly be greatly increased; while at the same time the administration would be embarrassed in Parliament and more dependent upon their faction<sup>2</sup>. According to Lord Royston a grave error was committed by "going so precipitately into a war with France before the real grounds of it, as stated by the Americans, were thoroughly understood; [also] the not sending a successor to Lord Albemarle<sup>3</sup> to sift the real intentions of that Court, the not making a point of uniting the Colonies for their common defence, before a war was entered upon"<sup>4</sup>—and, it may be added, while Great Britain had no allies of any weight on the Continent and her own military resources were so greatly inferior. "One great political reason for avoiding a war, by all means that were safe and decent, was the enormous power which was likely to be thrown by it into the Duke [of Cumberland]'s hands<sup>5</sup>." The Duke monopolised the management of military affairs, exercised his choice of commanders with unwise partiality and brought forward few or none of the more promising younger officers, while the necessary military training both of officers and men was much neglected, and was declared by Wolfe<sup>6</sup> to be the worst in Europe. There can be little doubt that to this cause must be chiefly ascribed the notable absence of military success in the initial stages of the war, and Lord Royston blames the ministers for continuing to carry on

<sup>1</sup> *Parl. Hist.* xv. 330. The second Lord Hardwicke does not appear to have understood the object and policy of the ministry when he writes "I must fairly admit that the draft of the speech was not strong enough about N. America, where we were sending troops and commissions, and had been forcibly dispossessed of forts. It gave an advantage to Potter [one of Pitt's adherents] the 1st day of the session. Pitt was silent, but had tutored the latter." *H.* 66, f. 206; see J. S. Corbett, *England in the Seven Years' War*, i. 10-30, 37.

<sup>2</sup> See above, p. 199; Ruvile, *Life of Pitt* (1907), i. 355; Lord Waldegrave's *Memoirs*, 46; *Lord Shelburne's Life*, by Lord Fitzmaurice, i. 79, Autobiography, "The war was contrived by the Duke of Cumberland underhand. Mr Fox was his instrument. Mr Pitt was not sorry for it, as things stood. The Duke of Newcastle was frightened, bullied and betrayed into it...."

<sup>3</sup> Ambassador to France; he had died at Paris in 1754.

<sup>4</sup> Lord Anson had urged the organisation of the colonists in the first place and their support by officers from England (*H.* 28, f. 127); and Lord Loudoun was sent as Commander-in-Chief of all the Colonies.

<sup>5</sup> *H.* 247, f. 4.

<sup>6</sup> *Wolfe's Life*, by Wright, 324, 329.



the government with this important province withdrawn from their control<sup>1</sup>.

The ill effects of these mischievous influences were only too apparent in the opening incident of the war. In October 1754 a force of 2000 troops was dispatched to the scene of conflict in North America, while a plan of campaign was settled for the following year, which included the conquest of Montreal and Quebec<sup>2</sup>. It was intended by the Chancellor and the Duke of Newcastle that the force should embark as secretly and as quietly as possible, in order not to alarm the French and avoid provoking reprisals. The expedition, however, with the object of precipitating the war, was published by Fox, now Secretary for War, in the *Gazette* and announced with as much parade as possible, without the knowledge or authority of the ministers. "The force," writes Lord Waldegrave, apparently unaware that he is censuring not the ministers but his friend Fox, "was nowise adequate to any great plan of operation, and might have gone imperceptibly without giving the least alarm. But the whole was conducted with all the pride and solemnity of a formidable armament, by which injudicious ostentation an European, as well as an American war, became inevitable<sup>3</sup>." In consequence of this ill-advised publicity a still stronger force was sent out by the French, which arrived safely at its destination, escaping Admiral Boscawen's fleet with the loss of only two ships<sup>4</sup>. The choice by the Duke of Cumberland of General Braddock to command the expedition, a favourite of his own but whose military abilities were generally decried, made success still more improbable. "I am sure," Col. Joseph Yorke writes on April 1, 1755, "that the account given you of him is the true one, for I have known him these 14 years and I never knew him do anything but swear, but you know he is not of my recommendation. There are several young gentlemen gone with the embarkation from Cork who, I am persuaded, will distinguish themselves and who may repair the want of better capacities in the chiefs." On May 20 he declares Braddock to be "the last man in the army he should have chosen for that command<sup>5</sup>." These

<sup>1</sup> H. 247, f. 4; pp. 282, 306, 310.

<sup>2</sup> H. 561, f. 208.

<sup>3</sup> *Memoirs*, 27; N. 166, f. 56; below, p. 282; R. Waddington, *Louis XV et le Renversement des Alliances*, 60-75.

<sup>4</sup> H. 258, f. 148; Barrow's *Life of Lord Anson*, 235; Waddington, *Louis XV et le Renversement des Alliances*, 60 sqq., 96, 106; Boscawen sailed on April 28, 1755, and the French fleet on May 3; below, p. 284.

<sup>5</sup> p. 285; H. 8, ff. 255, 312, 315, 354; H. 40, f. 61.

unfavourable forebodings were only too well justified by the subsequent total defeat of the general on attacking Fort Duquesne on July 9, 1755, a serious disaster for which a small success obtained by the British in surprising the French fort of Beauséjour on June 16, 1755, and another near Lake George gained by General Johnson in September, were no compensation. It is only fair to the unfortunate General's memory to add that he had great difficulties to encounter, that the colonists were backward in lending their assistance, that the conduct of his men was unsatisfactory and that he fought and died bravely with the last words on his lips "We shall know better how to deal with them next time<sup>1</sup>."

In the Council of Regency a sharp contest took place on the question of declaring war with France, which was strongly opposed by the Chancellor<sup>2</sup>, who was supported by the Duke of Newcastle, but urged persistently by the Duke of Cumberland and Fox. The war party prevailed so far that Sir Edward Hawke, who was placed in command of a fine fleet of 18 ships<sup>3</sup>, sailed with instructions, in July, to inflict all possible damage upon the enemy's shipping,—orders which were extended to the enemy's warships later in August<sup>4</sup>. War was not actually declared till May 17, 1756, after the attack upon Minorca had begun, but before the end of the present year Sir Edward Hawke succeeded in bringing in 300 French merchant ships and 7000 to 8000 French sailors. The ministers were hampered in their plans and operations in all directions. The Princess of Wales continued to cabal against them and to press for the appointment of Lord Bute as Groom of the Stole. The King, in spite of the ministers' expostulations, had persisted in leaving England for Hanover, accompanied by Lord Holderness, at the very moment when the outbreak of hostilities with France in Europe appeared imminent, and when

<sup>1</sup> H. 50, f. 271; Walpole's *Letters*, iii. 336; H. 28, f. 127.

<sup>2</sup> The shallow and hostile Lord Waldegrave adds in his *Memoirs* (47, 56): The Chancellor "agreeable to the common practice of the law, was against bringing the cause to an immediate decision"; though a few pages later he himself expressly states, "As to the land service, we first engaged in a war and then began to prepare ourselves; consequently our internal force must be very deficient. This might have been foreseen and prevented without any extraordinary sagacity; for it certainly was in our power to have deferred the war, till the nation had been in a better state of defence..." After this it is no great matter of surprise to hear that Lord Hardwicke "might have been thought a great man, had he been less avaricious, less proud, less unlike a gentleman and not so great a politician" (20).

<sup>3</sup> Barrow's *Life of Anson*, 239.

<sup>4</sup> A. T. Mahan, *Influence of Sea Power on History*, 284-5; below, pp. 282-3; H. 69, f. 90; H. Walpole's *George II*, ii. 32.

there was even some danger and risk attached to such an expedition.

In Parliament, Pitt and his adherents were fulminating against the Hessian treaty concluded on June 18, 1755, which secured, at the price of £300,000, 12,000 Hessians to serve in Germany, the Netherlands or Great Britain, as occasion required, and against the Russian treaty completed on September 30, whereby 55,000 Russians were engaged at the cost of £500,000 a year. Such subsidies were far more defensible in time of war than in peace, and no one knew better than Pitt their value or employed them to better purpose when in power. "While we had France for our enemy it [Germany] was a scene to employ and to baffle her arms. Had the armies of France not been employed in Germany, they would have been transported to America....America had been conquered in Germany." These were Pitt's words in discussing the Treaty of Peace in 1762<sup>1</sup>. Now however the same measures "were framed entirely for the preservation of Hanover," as parts of "a vast comprehensive system," an "unsizeable, impracticable and desperate project," which must "bring bankruptcy upon Great Britain." The British people were "pressed into the service of an electorate...deceived by names and sounds...and none but a nation that had lost all signs of virility would submit to be so treated<sup>2</sup>."

In the Lords the attack upon the government was begun on November 13, 1755, on the address of thanks for the King's Speech by Lord Temple, who was answered by the Chancellor, after which the motion was agreed to without a division. On December 3 Lord Temple moved for papers relating to various Hessian and Russian treaties, "and fell upon the Chancellor who, he said, had hurried on the taking them into consideration, and by his own authority converted three weeks into a fortnight...And then the Chancellor laid Temple on very handsomely, said he did not expect, nor had ever heard, so unfair an allegation in that House of Parliament, appealed for his candour in wording the motion for taking the treaties into consideration of the whole House, and observed much, and very well and with a great deal of spirit,...upon the particular spleen and temper that Temple seemed to show upon the present occasion<sup>3</sup>." Lord Temple, however, undeterred

<sup>1</sup> *Parl. Hist.* xv. 1266; also Walpole's *George III*, i. 75.

<sup>2</sup> Almon's *Anecdotes and Speeches of Lord Chatham* (1793), i. 276.

<sup>3</sup> Rigby to Duke of Bedford, December 4, *Bedford Corresp.* ii. 176.

by these rebukes, renewed his attack on December 10, when the Chancellor once more spoke in support of the government. "Seeing the Prince of Wales there taking notes, he said he now began to have hopes of him; hoped he would be the father of all his subjects<sup>1</sup>." He emphasized the fact that these treaties constituted no new departure but were merely a developement of former policy. It was impossible to acquiesce in the new and strange doctrine that England should never enter into any treaties of alliance abroad, a doctrine which would be absolutely inconsistent with the safety and interests of the kingdom. No man of sense or integrity would say that they could quite separate themselves from the continent. A commercial kingdom must have connections there. Far from being a measure to kindle a general war upon the continent, as had been objected, this was one to prevent it, and was a treaty of defence with Russia against any power which should attack the King or his allies. Nor was it entered into singly for the defence of Hanover, though that was included in it, only, however, in the case that Hanover should be attacked on account of Great Britain. Its purpose was also the defence of Great Britain and of the King's allies, and for these objects they must employ foreign troops; they had none to spare from home. He regretted the frequency of the introduction of Hanover into their debates as an instrument of raising popular disaffection. Had there been no connection with Hanover, it would nevertheless have been necessary to take some such measures to prevent the extension of French influence throughout Europe. He would himself make no attempt to appeal to passions but to unbiassed judgments. But, for God's sake, from whence proceeded all that unprovoked, unprecedented invective? Had ministers in an instant changed their shapes and natures to be one month panegyricized into angels and the next transformed into monsters<sup>2</sup>? It must proceed from some hidden cause which he would not pretend to explain. He concluded by alluding to the "impotent menace" thrown out of invoking the parliamentary power of impeachment. Their lordships' justice was not a thing to

<sup>1</sup> *Parl. Hist.* xv. 529-31 and 616-47, where the Chancellor's notes of these debates and his speech on the latter occasion are printed. H. 5, f. 181. Walpole's *George II*, ii. 49, 104, according to whom the Chancellor "spoke severely against Lord Temple and fulsomely and indecently...flattered the Duke [of Cumberland]."

<sup>2</sup> "Lord Temple repaid the invective. He did not know, he said, whom he had painted as angels; he had some time ago heard one man (Mr Fox by Lord Hardwicke on the Marriage Bill) painted as a monster—he did not know how he would be represented now." Walpole's *George II*, ii. 105.

be played with, and those that did so, were usually the first to suffer by it.

The motion of censure upon the government was then put to the vote and lost by 85 to 12<sup>1</sup>.

The new year, 1756, opened gloomily. Though the formal declaration of war with France was not published till May, it was plain that a great contest had been entered upon and, if Britain was to stand alone, with insufficient forces. There appeared every prospect of an immediate invasion, and to supply the want of a military force, application was made to the Dutch for the 6000 men which they were bound by treaty to send over in such a contingency, and on their refusal<sup>2</sup> a large force of Hessians and of Hanoverians was landed in this country in May 1756. The employment of foreign troops in support of the national security, though by no means unprecedented, put a useful weapon into the hands of the Opposition. "What an inglorious picture for this country," cried Pitt, "to figure gentlemen driven by an invasion like a flock of sheep, and forced to send their money abroad to buy courage and defence<sup>3</sup>!" In December 1755 Charles Townshend had introduced his Militia Bill, which received Pitt's strongest support and which now passed the Commons in May 1756. The proposed measure, like many other subsequent military schemes, was specious and plausible on paper. It provided a militia of 61,250 men, all foot, liable to be called upon by the civil power to serve outside their counties but not abroad, and subject only to the civil law, except when actually embodied, the Crown being empowered, after apprising Parliament, to call out the force and place it under officers of the regular army in case of rebellion or invasion. The Lords-Lieutenant or their Deputies, together with the commissioners of the land tax, fixed the proportion for each hundred, and supervised the lists, the men being chosen by ballot and serving for three years. They were to be exercised on Sunday, and to receive when called out the same pay as the regular forces, and it was computed that, in the course of 12 years the scheme would provide 240,000 or 250,000 men trained to arms, while the cost was reckoned at not more than £300,000 a year<sup>4</sup>.

<sup>1</sup> *Parl. Hist.* xv. 659-662; Walpole, *George II*, ii. 105. For debate in Commons, December 13, see H. 5, ff. 181, 183, and Walpole's *George II*, ii. 118.

<sup>2</sup> Waddington's *Louis XV*, 228.

<sup>3</sup> Walpole's *George II*, ii. 101.

<sup>4</sup> Walpole's *George II*, ii. 97, 191, 201; Clode's *Military Forces of the Crown*, i. 38-41; see the Bill with corrections, some in H.'s hand, H. 529, ff. 277 sqq.

The general principle of the bill, which was the substitution of a genuine British force for the foreign regiments in the cause of the national defence, appealed strongly to the sentiment of national honour. "Walled towns, stored arsenals and armories...", Bacon had written, "number in armies, ordnance and artillery—they are all but a sheep in a lion's skin, except the breed and disposition of the people be military....A Prince or State that resteth upon waged companies of foreign armies...may spread his feathers for a time, but he will mew them soon after<sup>1</sup>."

The notion that an untrained or half-trained body of men, because they were British, were equal to the well-drilled and disciplined approved foreign troops and could take their place, flattered the national pride. The Bill in the abstract was extremely popular and was approved by several supporters of the government, including the elder Horace Walpole, the speaker Onslow and Sir George Lyttelton. In reality, however, the measure was ill-considered and objectionable in many of its details. The debates upon it in the House of Commons had been neglected and had frequently taken place with not more than 15 members present, and the real object of the zeal and eagerness shown in pressing on the measure was to embarrass the government by forcing ministers into opposition to a popular measure<sup>2</sup>. Many, according to Walpole, voted for it, believing that its own impracticability would defeat it, and on May 18, 1756, it was read a second time in the Lords with the support of the Duke of Bedford, and allowed to pass through the Committee without any division<sup>3</sup>.

On the third reading, however, on May 24, the Chancellor declared against it, in spite of representations from several quarters, urging a prudent acquiescence. The speech which he made on this occasion and which lasted an hour, was printed by his authority, a proof of his anxiety that the nature and reasons of his opposition should not be misunderstood<sup>4</sup>. He began by complaining of the manner in which legislation was carried through Parliament. Formerly, laws were first considered and passed in the Upper House where the learned judges were always ready to give their assistance. They were able to inform Parliament, from their knowledge and experience, whether the grievance complained of proceeded

<sup>1</sup> *Of the Greatness of Kingdoms*.

<sup>2</sup> R. Phillimore, *Memoirs of Lord Lyttelton*, 510; H. Walpole (the elder) to H., H. 246, f. 40 and Coxe's *Lord Walpole*, ii. 424; H. 246, ff. 263, 296.

<sup>3</sup> *Parl. Hist.* xv. 704-6.

<sup>4</sup> It was reprinted in 1770 and again later in the *Parl. Hist.* xv. 724.

from the non-execution of the existing laws and whether it was of such a nature as might be remedied by a new law. This was the meaning of the writs of summons, those to the Commons being "ad consentiendum," and those to the Lords "ad consulendum<sup>1</sup>." The method now prevailing of sending up Bills drawn and passed in the Commons to the Lords at the end of the session, when there was no opportunity to properly consider them, had great inconveniences. The Bills, drawn up without consultation with the judges and neglected by the Lords through want of time, nearly always required further new laws for explaining and amending them. By these means the statute books had grown to such a bulk that the most experienced lawyer could not pretend to be master of their contents. It was high time to put a stop to this abuse, and their Lordships should refuse to pass any Bill which came up to them too late to examine it maturely and with the assistance of the judges. Moreover, the following points should receive their special consideration: (1) whether a new law was necessary for the purpose intended, since a multitude of useless laws was the greatest plague to which a people could be exposed; (2) whether the grievance was of such a nature as to be curable by any human law; (3) whether the removal of the particular grievance might not result in introducing one still greater; and lastly, whether the law was expressed in clear terms and was such as would effect the object desired.

Proceeding, he claimed indulgence on account of illness, and began by declaring and affirming his own decided preference for a national militia to the employment of foreign troops. "I am for a militia and I am against laying the nation under the necessity of resorting to the aid of foreign forces in general." But he objected to the present Bill on two general grounds. The first was a constitutional one of some gravity, though "he could with truth affirm to their Lordships that he was not for stretching the prerogative; nor was he ever thought by any impartial man one of those who are called prerogative lawyers. He was only concerned for the due temperament of this mixed government; that this limited monarchy, as established since the Restoration, and improved at the Revolution, may be preserved and delivered down unhurt to posterity." In this Bill the militia was taken from the control of the Crown and placed under that of Parliament, violating the law enacted at the Restoration, which, in its preamble, declared "that the sole and supreme

<sup>1</sup> Stubbs' *Constitutional History* (1880), iii. 428, but this distinction did not apparently always exist in the earlier writs of Edward I, cf. ii. 273-5.

power...command and disposition of the militia is...and ever was the undoubted right of his Majesty." This the present Bill repealed. It obliged the Crown to apprise Parliament before calling out the force, an obligation which in time of emergency might render it useless. It provided no pay for the men when called out and, lastly, it placed the execution of the Act chiefly in the hands of the Land Tax Commissioners, a class of officials appointed exclusively by the House of Commons and which included no peers. "The scale of power in this government has long been growing heavier on the democratical side. I think this would throw a great deal of weight into it. What I contend for is this, to preserve the limited monarchy entire, and nothing can do that but to preserve the counterpoise."

After dwelling upon a number of special defects in the Bill in detail, such as the absence of provision for maintaining discipline and the undesirable multiplication of oaths which the Bill further increased, he passed to the general political objection that such a Bill would make a military state. "In universum, populi bellicosi ferari gaudent," Bacon had written, "et pericula quam labores minus exhorrent<sup>1</sup>." He distinguished between a "martial spirit" and a "military habit." To instil the former there was nothing better than to make the practice of shooting with muskets general throughout the country; and this could be easily effected by a slight modification of the statute of 33 Henry VIII, c. 9, which ordered the practice of shooting with the bow and arrows for all males between 7 and 60. As for the latter, he declared it his absolute conviction that a nation of merchants, manufacturers, artisans and husbandmen, defended by an army, was vastly preferable to a nation of soldiers. The weaning of the people since the days of Elizabeth from arms to trade, arts and manufactures, had been the origin of the national greatness and prosperity. From thence had sprung commerce, colonies, riches, England's real strength. In Scotland, on the other hand, had been lately seen the results of the practice and habit of arms. The people had become averse from agriculture and labour, idle, followers of sports, next of thieving, and at last of rebellion, as a more extensive scene of plunder. To cure this mischief they had been disarmed, and would their Lordships introduce the same disposition into England?

He added a third religious objection; the regular exercise on

<sup>1</sup> *De Augmentis Scientiarum*, lib. 8, cap. 3, sect. 5.



Sunday would turn the holy day into a fair, and a constant scene of jollity and the face and public appearance of religion would be abolished from the country<sup>1</sup>.

In conclusion he reaffirmed his general approval of a militia and declared, if another Bill should be brought in next session, providing for a force of about half the number now proposed and controlled by the Crown, or to be incorporated upon emergency with the regular troops, he would support it. The Bill was then rejected by a great majority, the numbers being 59 to 23<sup>2</sup>.

"My Lord Chancellor's argument against the Bill," wrote Gilbert Elliot, an adherent of the Pitt faction and supporter of the measure to George Grenville, "was worthy of so great a man, one who declared that day he was no prerogative lawyer. He too is a friend to militia; his idea is that it ought to consist only of 30,000 men, a fixed revenue for their pay, not to be annually voted, to depend

<sup>1</sup> Several petitions and remonstrances from Protestant Nonconformist and Anglican bodies were presented to Parliament against this provision. *Parl. Hist.* xv. 782.

<sup>2</sup> *Parl. Hist.* xv. 724-746; for list of division H. 529, ff. 303-5, and notes of Lord H.'s speech f. 293, beginning:—

"Sorry to differ

—more sorry that, after bill having been depending four months, it comes now to be debated originally and for the first time in this last stage of it.

—Respect for the persons and for the abilities of those etc.

Very laudable to turn their thoughts to some scheme for rendering the Militia useful.

Brought in with a reasonable view, a view of prudence and temper.

—to lie over to another session to be understood and considered.

Why that was departed from, especially as it is avowed that it can be of no use in our present exigency, cannot imagine.

As I have had the misfortune to be all along of opinion against this bill, think it my duty to declare my thoughts.

As I am not perfectly well at present, desire to be heard with some indulgence and with some excuse for what I shall say—

Shall deliver my opinion with the same freedom, as if I had no other seat in this House but etc.; and with the same truth and sincerity, as if I was absolutely certain that it was the last opinion I should give here.

Obj: Am aware of some prejudices—against a militia in general—for creating and perpetuating the necessity of foreign forces. *Disclaim them both—am for a militia.*"

But N.B. f. 299 where the passage beginning, "We have seen this in Scotland" is crossed out, and the whole ends with "Liberavi animam meam" erased.

There is very little resemblance to the speech printed in the text of the *Parl. Hist.* xv. 724 which, however, is the only version which contains the Chancellor's complaints on the subject of legislation. Clode, *Military Forces*, i. 38; L. Dickens, *An 18th Century Corr.* 335; cf. Walpole, *George II*, ii. 202, who adds incoherently, "If I have here marked out Lord Hardwicke's memory to the indignation of free men, he might pardon me; there are always numbers ready to admire the advocates of prerogative—Laud had his adorers, Jeffreys hardly escaped them." Cf. also the amiable Glover: "No one distinguished himself more in opposition to it than the Chancellor Lord Hardwicke, marking his own prostitution and servility under religious cant and hypocrisy by declaiming against the profanation of the Sabbath." (*Memoirs*, 74.)

solely on the Crown. The consent of Parliament to their being called is no doubt a violent encroachment upon prerogative.... This hint, it is devoutly to be wished, will be adopted next session<sup>1</sup>."

In the following year, 1757, the Bill was received from the Commons<sup>2</sup> once more and amended by the Lords in accordance with the Chancellor's views now expressed. The land-tax commissioners were excluded from the execution of the Act, which was placed in the hands of the Lords-Lieutenant and their Deputies. The number of men to be enrolled was reduced to 32,340. The training day was changed from Sunday to Monday, while the term of service was limited to three years and the annual training to 20 days. Moreover, in case of emergency, when Parliament was not sitting, the force could be called out by the Crown by proclamation<sup>3</sup>. The new measure, however, which was passed into law for five years on trial on June 28, 1757, by a wave of national sentiment, by no means fulfilled the expectations of its zealous promoters. Immediately upon being put into execution, the Act became exceedingly unpopular. The enthusiasm of the country gentlemen was seen then not to extend in general beyond the parliamentary debates and they showed, with some few exceptions, very little zeal in entering upon their new military functions<sup>4</sup>; while the obligations and burdens it placed upon the people were so distasteful and oppressive, as to cause organised resistance and dangerous riots in several parts of the country<sup>5</sup>. In 1759, by which time 17,436 men had been raised

<sup>1</sup> *Grenville Papers*, i. 160-1.

<sup>2</sup> Walpole's *George II*, ii. 302, 318; H. 532, ff. 312 sqq., for notes of a speech by Charles Yorke in which the inferiority of a half-trained militia to a regular force was strongly argued.

<sup>3</sup> H. 529, ff. 312 sqq.; *Statutes at Large*, xxii. 129, 30 George II, c. 25; *Parl. Hist.* xv. 739, 782; Glover's *Memoirs*, 94, 107; "As to the militia, says Dodington, such a one as it will be, you would have had from the old ministry; and it is most true that he wrote to me in the summer on that subject and proposed to consult with Lord Hardwicke upon it; to this I replied, that always suspecting unfair dealing from this channel, and that a snake in the grass would lie concealed even under a militia of his contriving, I earnestly entreated Mr Dodington to have no concert with the Chancellor on that head, and for that reason declined to give my sentiments....[The proposals however were submitted to Lord H. (H. 3, f. 360).] In fine the bill passed modelled to the sense and relish of such court sycophants as Hardwicke." Yet Mr Fortescue can write in his *Hist. of the British Army*, ii. 301, that "the measure was practically identical with that which had been rejected in the previous year," and add—a truly astonishing statement in a military work—"the regular army was set free for service abroad."

<sup>4</sup> See H. 311, Lord Royston's militia correspondence and the variety of excuses, ranging from "shortness of breath" to the case of Mr Martin Bird, who desired to have his name scratched off the militia list as his wife "on hearing he had taken a commission, was so affected he thought she would have died."

<sup>5</sup> See below, chap. xxviii.; Chatham MSS. 53.

and 6280 embodied, the force was once more reconstructed with better prospects, and placed, according to the Chancellor's original advice, under the military law and the Mutiny Act. Yet though many generations have since passed and many schemes have been devised and put into execution, the great mass of able-bodied men in Great Britain still remains untrained to arms and unorganized for war. The nation, moreover, appears in a condition far more defenceless than in 1756. Its standing force is reduced to perilous insignificance by economies of funds intercepted and squandered elsewhere; the disparity of military strength relative to the European nations with their armed millions, is grown still greater, and become still more glaring on account of the vast progress and development made in the military art and the increased value of military training, while the resource so largely employed by our ancestors of utilising foreign troops is no longer available.

The threatened invasion, however, and the preparations at Brest and Dunkirk which had caused the panic, proved in the end to be a feint to attack elsewhere, or else were abandoned in view of the substantial forces collected together for the defence of England. The armaments which had been fitting out at Toulon were now seen to be destined not for America, the West Indies, Ireland or England, but against Minorca. Judging by the event, the government was probably mistaken in not reserving and dispatching a relieving force earlier to the Mediterranean, but judging in view of the actual circumstances and the untrustworthy or contradictory information concerning the plans of the French, which they received, they probably acted with prudence and wisdom in retaining their resources at home, till the French plans were further developed and till they knew with certainty in what quarter the blow was to fall, whether in Great Britain, America or the Mediterranean<sup>1</sup>. Moreover, as the issue proved, the expedition not only arrived in full time to support the garrison in Minorca but the latter, even after Byng's departure, though far from complete in its numbers, yet with a fortress well-stored and the batteries well and effectively served<sup>2</sup>, was able to hold out for five weeks longer. After the event, it was astonishing what wisdom and foresight had existed, modestly concealed, before it. All except the ministers, it was declared, had known the real intentions of the French. The Duke of Cumberland

<sup>1</sup> Phillimore, *Mem. of Lord Lyttelton*, 522; below, pp. 285-7, 290 n., 306; Ruville's *Pitt* (1907), i. 390; N. 175, f. 30; N. 179, f. 490; H. 67, ff. 147-9; and further chap. xxiv.

<sup>2</sup> Fortescue's *Hist. of the British Army*, ii. 294.

had urged arming sooner. Fox had wished a strong squadron to be sent out in March but could not prevail. The policy and plan of the ministers were, however, in reality settled in full accordance with expert opinion. Lord Anson, writing to the Lord Chancellor on December 6, 1755, objects to the dispatch of the fleet away from home waters to stations whence it could not be recalled if wanted, and declares himself "strongly of opinion that, whenever the French intend anything in earnest, their attack will be against this country. This I should be glad the Duke of Newcastle should know<sup>1</sup>." Their action was also fully supported by the public and by contemporary opinion, till Byng's disastrous failure ruined everything and offered too advantageous an occasion for attacking the government to be resisted. It was not till May 7, 1756, long after Byng had sailed and Richelieu, the commander of the French expedition, had landed in Minorca, that Pitt accused the ministers of neglect, and declared it a wilful, deep-laid scheme for avoiding the war, an intentional loss of Minorca to excuse a bad peace and justify the abandonment of America<sup>2</sup>; and not till June 16 that "innocent and gallant men's honour and fortune were to be offered up as a scapegoat for the sins of administration." Even Horace Walpole, the most malicious and strenuous traducer of the ministers, continues to praise and approve of their conduct till the disaster. In February 1755, he speaks of the fleet of 30 ships, "fitted out with equal spirit and expedition. Lord Anson had great merit in that province where he presided." On June 15 he writes again, "The spirit and expedition with which we have equipped so magnificent a navy has surprised them [the French] and does exceeding honour to my Lord Anson who has breathed new life into our affairs." In August "nothing is so popular [in the city] as the Duke of Newcastle." In November "Lord Anson, attentive to, and in general expert in, maritime details, selected with great care the best officers." On April 20, 1756, he congratulates himself on the diversion of the French attack away from England to Minorca. "The French are said to be sailed to Minorca, which I hold to be a good omen of their not coming hither, for if they took England, Port Mahon, I should think, would scarcely hold out." On July 11, he writes of the incriminated officers, "one talks coolly of their being broke and that is all." It is not till after the arrival of the

<sup>1</sup> H. II, f. 384.

<sup>2</sup> Walpole's *George II* (1849), ii. 189; below, p. 289. Cf. also *Grenville Papers*, i. 164, 168.

news of the disastrous capitulation, at the end of July, that Lord Anson's "incapacity grew the general topic of ridicule," that the "ministers were preparing to transfer the guilt to others," and that all were asking why Byng was not sent sooner and sent stronger<sup>1</sup>. It is interesting also to follow the developement of Col. Joseph Yorke's opinion at the Hague, always exceptionally well-informed, and supplied with accurate foreign information, who, though intimately connected with the administration and Lord Anson, shows great independence in his criticisms. In the early stages, while expressing his disbelief in the projected invasion and directing the attention of his Father to the absence of ships of transport, he approves strongly of all the precautions taken by the government, as the surest way of preventing the attempt<sup>2</sup>. Later, after Byng's sailing, he repeats and reproduces the criticisms passed upon the government abroad for not sending a larger force earlier to the Mediterranean, and even justifies and approves Byng's inaction<sup>3</sup>; but finally, after the publication of papers and of Byng's instructions and a closer examination of the facts, he is convinced of Byng's misconduct; and writing on May 13, 1757, after the finding of the parliamentary enquiry, while rejoicing at the complete justification of the ministers, he notes that their chief defence was "pinned upon the advices about the invasion, and as this is a matter of opinion, nobody can pretend to condemn what was done. You know at the same time that I never was of that opinion, though some of the most circumstantial evidence about it came from me<sup>4</sup>."

The sequence of the extraordinary events which led to the loss of Minorca was as follows. On April 6, 1756, three days before the departure of the French fleet from Toulon, Admiral John Byng, a younger son of the Lord Torrington, who had gained his naval reputation by his successes in the Mediterranean, chosen to command the expedition as senior officer next to Lord Anson himself, sailed from Spithead with a fleet of 10 ships<sup>5</sup>, a regiment of Fusiliers,

<sup>1</sup> Walpole's *George II* (1847), ii. 1, 33, 227; *Letters* (1903), iii. 314, 417, 436, 439; H. 8, f. 312.

<sup>2</sup> pp. 285-7; H. 8, f. 354.

<sup>3</sup> pp. 289, 295, 297; H. 40, ff. 160, 165, 171; H. 16, ff. 89, 99.

<sup>4</sup> H. 16, f. 213; below, pp. 303, 341 *n.*, and H. 40, ff. 149 sqq.; the project of invasion, however, seems to have been genuine and to have been taken up again in August. See letters from Compiègne to the French minister at the Hague intercepted by Col. Yorke, H. 246, f. 132.

<sup>5</sup> The assertion made afterwards that they were in bad condition was contradicted by the Inquiry of the House of Commons, of which one of the resolutions certified that the "10 ships at their sailing were fully manned...and as appears from a letter of the said

and definite orders to relieve Minorca "without a moment's loss of time" and by "all possible means in his power," in case of an attack upon it by the French<sup>1</sup>. On his arrival at Gibraltar on May 2, after a very slow voyage of 26 days, occasioned by "contrary winds and calms<sup>2</sup>," for which delay however he was not held responsible by the subsequent court-martial, he received the news of the landing of the enemy on the island on April 18 with an army of about 15,000 men and siege artillery, which was supported by a fleet of 12 ships<sup>3</sup>; and all doubt as to his future action must have been dispelled. He was here reinforced by three men of war and three frigates, which rendered the fighting power of the two fleets about the same<sup>4</sup>, and a bright and exhilarating prospect of an engagement with the enemy upon equal terms, of the capture or destruction of their squadron, of shutting up a large French force in Minorca, and of ultimately securing their capitulation, presented itself to the British admiral<sup>5</sup>. But hopes, which would have given wings to the movements of any other man and braced every chord of moral and physical energy, became risks and dangers in the mind of the pusillanimous Byng and paralyzed his action. The spirit in which he set out to engage the enemy now appeared<sup>6</sup>. His instructions were to take on board a battalion of soldiers from the Rock to reinforce the garrison at Minorca; but, already despondent, he acquiesced in the refusal of Fowke, the Governor, who had been directed to supply them, on the plea of the hopelessness of the attempt, and that strengthening the garrison by reinforcements would only be increasing eventually the number of prisoners<sup>7</sup> and,

Admiral [Byng] to the said Commissioners, were in every respect, ready for sailing." *Parl. Hist.* xv. 826; see also H. 547, f. 343, and Add. 31,959, f. 3.

<sup>1</sup> See his instructions printed in Beatson, *Naval and Military Mem.* iii. 113.

<sup>2</sup> H. 547, f. 344.

<sup>3</sup> pp. 288-9, 291, 295.

<sup>4</sup> The British had 950 guns to the French 914, computed from the 12 April, when the French fleet left Toulon, and 7037 men to the enemy's 7180, and 13 men of war to 12, H. 547, ff. 12, 28 and 337 sqq. and 349: according to a statement handed in by Byng, however, the French ships threw a heavier broadside (*Trial of Ad. Byng*, app. xxvii., xxviii.). Lord H. himself describes the British fleet as "rather superior."

<sup>5</sup> Walpole, *George II*, ii. 212.

<sup>6</sup> See especially his own letters, May 4, May 25 (below, pp. 287, 291-5), the former full of fears and complaints, of which almost every sentence begins, "if I had been so happy," "as it has unfortunately turned out," "I am sorry to find," "it is to be apprehended," "I fear," "I am afraid." According to Walpole (*Mem. of George II*, ii. 217), the King on receiving this letter dashed it to the ground, exclaiming, "This man will not fight."

<sup>7</sup> Cf. Blakeney (the Governor of Minorca)'s evidence at the court-martial in reply to Byng, "By the oath I have taken I believe I could have held out till Sir Edward Hawke came, if that detachment had been landed," and also as to the facilities of landing troops, *Trial*, pp. 51 sqq., 79, and below, pp. 306, 355. Cf. also Walpole, who writes

after having remained six days at Gibraltar<sup>1</sup>, sailed without them on May 8 "with little, if any, hopes of relieving Minorca<sup>2</sup>." On the 20th of May took place the unfortunate engagement with the French fleet, grossly mismanaged by the British admiral, who failed altogether with the ships he was commanding in person, on which not one man was either killed or wounded<sup>3</sup>, to get into action with the enemy. The whole loss was insignificant, the British casualties being 211 to the French 219, of which 43 were killed among the former and 38 among the latter<sup>4</sup>. Nevertheless the attack was not renewed; and four days afterwards, fortified by the fatal resolutions of a council of war<sup>5</sup>, Byng withdrew to Gibraltar.

It is clear that there was here a great failure in plain duty. There was still every hope of success in accomplishing the object of the expedition. Without some risk no advantage in war can be obtained, and supposing even that the renewal of the naval engagement had ended disastrously, and that the fleet had failed in communicating with the garrison<sup>6</sup>, yet some damage would have been inflicted upon the French naval forces and the garrison would

(*Letters*, iii. 433), "Instead of being shocked by this disappointment, Byng accompanied it with some wonderfully placid letters in which he notified his intention of retiring under the cannon of Gibraltar, in case he found it dangerous to attempt the relief of Minorca."

<sup>1</sup> Cf. Wolfe, "If Byng has lost one day at Gibraltar, he is the most damnable of traitors." *Life*, by R. Wright, 346 sqq.; Walpole's *George II*, ii. 299. The court-martial, however, absolved him from any blame on this point.

<sup>2</sup> Byng's private letter of May 25, p. 293; H. 547, f. 25.

<sup>3</sup> *Gent. Mag.* xxvii. 154; A. F. Mahan, *Types of Naval Officers*, 47 sqq.; *Grenville Papers*, i. 163; and account of the French Admiral La Galissonnière, H. 547, f. 12, "En général il n'y a eu aucun de leurs vaisseaux qui ait soutenu longtemps le feu des nôtres."

<sup>4</sup> H. 547, f. 28.

<sup>5</sup> "1. Whether an attack upon the French fleet gave any prospect of relieving Mahon?—Unanimously resolved it would not. 2. Whether if there was no French fleet cruising off Minorca the English fleet could raise the siege?—Unanimously of opinion that the fleet could not. 3. Whether Gibraltar would not be in danger by any accident that might befall the fleet?—Unanimously agreed that it would be in danger. 4. Whether an attack with our fleet in the present state of it upon that of the French will not endanger the safety of Gibraltar and expose the trade of the Mediterranean to great hazard?—Unanimously agreed that it would. 5. Whether it is not more for his Majesty's service that the fleet should immediately proceed for Gibraltar?—We are unanimously of opinion that the fleet should immediately proceed for Gibraltar." H. 547, f. 14; Beatson, i. 478. "By all one learns," wrote Walpole on June 8 in a very different strain to that adopted afterwards, "Byng, Fowke and all the officers at Gibraltar were infatuated! They figured Port Mahon lost and Gibraltar a-going! a-going!" *Letters*, iii. 431.

<sup>6</sup> "There would not have been the least difficulty," writes Fox to the Duke of Bedford on September 7, on the authority of Col. Jeffreys, who had been the life and soul of the defence, "in landing succours, had we but tried." *Bedford Corresp.* ii. 193, 195, 197; see also above, p. 270 n.

have been encouraged to hold out till reinforcements, which in fact to the number of five large ships of the line with several transports and three regiments, sailed from England on May 25th and arrived at Gibraltar on June 15, rendered a further attempt practicable<sup>1</sup>. In the event, the garrison at Fort St Philips, after gallantly holding out five weeks after Byng's departure, laid down their arms on June 28, marching out with the honours of war and being conveyed to Gibraltar, when the whole island fell into the possession of the French<sup>2</sup>.

This was a serious reverse, and though when viewed in just proportion and taking into account the fickleness of the fortune of war, the disaster was not more than one unfavourable incident in the great, prolonged and ultimately victorious, struggle with France, and was far from having any decisive influence upon the final issue, yet being a naval defeat, it wounded deeply the national pride, and was exaggerated by Pitt and his adherents in

<sup>1</sup> Add. 31,959, f. 4.

<sup>2</sup> For accounts see H. 547, a collection of papers relating to the loss of Minorca and Add. 31,959; *Gent. Mag.* vols. xxvi. and xxvii.; Dodington's *Diary*, 345-6; R. Waddington's *Louis XV et le Renversement des Alliances*, 438; *Trial of Admiral Byng* (1757); art. on Byng by Professor Laughton in the *Dict. of Nat. Biog.*; R. Phillimore's *Memoirs of Lord Lyttelton*, 504, 519; *Chatham Corresp.* i. 163; *Life of Lord Barrington* (1814), 21 sqq., who writes "It was their [the ministers'] misfortune to have had the practicable measures resolved on by them so infamously executed" (Add. 6834, f. 10), also ff. 1-4 and 9; and Beatson's *Naval and Military Memoirs* (1804), i. 462 sqq. and iii. 113 sqq., where documents are printed and a zealous but unconvincing defence of Byng is made, extending even to his management of the naval engagement, while that of Galissonnière, the French admiral, is held to be "highly blameable." These events are much misrepresented in Mr Fortescue's *Hist. of the British Army*, ii. 291, who, while pursuing his general argument, forgets all the facts in favour of the admiralty and the ministers. He calls Byng's ships "ill-manned and ill-found," neglecting the findings of the House of Commons and Byng's own testimony to the contrary (above, p. 269 n. 5), and makes no mention of the three extra ships and frigates which joined Byng at Gibraltar and gave him a nominal superiority. He writes, "Byng's fleet was so slenderly manned that he required the 7th Fusiliers for duty on board ship and therefore asked Fowke for a battalion for Minorca," whereas the ordinary complement of marines had been purposely withdrawn from the ships before sailing to admit the Fusiliers for embarkation and service at Minorca, and the further supply of troops from Gibraltar was included in Byng's and Fowke's official instructions, leaving neither officer any option in the matter and forming part of the official plans for the defence of Minorca. The writer's tirades against the government conclude with "finally...the unfortunate admiral was shot because Newcastle deserved to be hanged." The value of this military history appears to be greatly diminished by the exclusive military partisanship with which it is written. The conduct of the administration cannot be judged alone by the activity or success in one direction or sphere; this must be viewed in relation to responsibilities and expenditure of resources elsewhere, to the political condition at home, to the strength of the nation compared with that of the enemy; and military and naval preparations and policy must be judged by contemporary and not by present standards.



order to inflame the populace against the ministry. On August 20 the Lord Mayor presented an address to the King from the Corporation of London, reflecting upon the neglect of the government, the dishonour incurred by the nation and the need for a constitutional militia, and demanding the punishment of those responsible<sup>1</sup>. Lord Anson, Pitt declared, "was not fit to command a cockboat on the river Thames<sup>2</sup>." A violent campaign of calumny and abuse was initiated against the Duke of Newcastle upon whom, in accordance with the plan and object of the attack, it was sought to cast the chief blame and responsibility<sup>3</sup>; while the unhappy Byng, the real author of the calamity, who had been promptly superseded by the government and brought home a prisoner, was elevated to the rank of a victim and a hero. Further misfortunes in other parts of the world, where the contest was being fought out, added to the difficulties of the administration and increased the strength and opportunities of the Opposition. In America the fort of Oswego was captured by Montcalm on August 14, 1756; and not long afterwards came from India the news of the capture of Calcutta by Surajah Dowlah and of the tragedy in June of the Black Hole.

The Chancellor felt the disappointment arising from these mishaps very keenly, not only from public but also personal reasons, owing to his near kinship with Lord Anson, for whose rapid rise in his profession and appointment to the head of the Admiralty he was mainly responsible. Some part of the popular outcry moreover was aimed at himself. He however viewed the recent disasters in their real proportion, showed no signs of yielding to clamour, repudiated the notion of "deserting the King and running away from danger," and quietly made preparations for remedying the ill-effects of the disaster and for justifying the government policy to the public<sup>4</sup>. The administration, though shaken, had nevertheless a position still of much strength and stability. They had the national resources well in hand. They had an army increased by the formation of ten new regiments, by the regiments returned from Minorca, as well as by four battalions of foreign Protestants enrolled in America, and the Hanoverian and Hessian troops now enlisted<sup>5</sup>. They had a large and well-equipped navy, of which the

<sup>1</sup> *Gent. Mag.* xxvi. 408.

<sup>2</sup> Almon's *Anecdotes of Chatham*, i. 288.

<sup>3</sup> pp. 289, 306.

<sup>4</sup> pp. 306-11; Walpole's *George II*, ii. 260.

<sup>5</sup> Fortescue's *Hist. of the Brit. Army*, ii. 288. According to an army list sent by the Duke of Cumberland to the Chancellor July 18, 1755, the total number in Great Britain was 22,943. H. 545, f. 170.

number of ships in August 1756 had increased to 345 from the 291 to which it amounted in 1752, containing 50,000 seamen, while the government in December had 60 ships of the line at home as well as frigates ready for any emergency, a force greatly superior to the French<sup>1</sup>.

On the refusal of Austria to cooperate with Great Britain in the defence of the Netherlands the government had concluded, in January 1756, with the King of Prussia, the Convention of Westminster, by which England and Prussia engaged to resist any foreign invasion of Germany<sup>2</sup>, an important treaty which initiated the later military alliance with Frederick, and which superseded the convention between England and Russia<sup>3</sup>, the latter power in December acceding to the Treaty of Versailles of May 1, 1756, between France and Austria. In September the ministry determined, in conjunction with Frederick, to form an army in Germany of 30,000 Hessians and Hanoverians, to be joined by 11,000 Prussians, and the developement of their plans was only interrupted by the domestic cabals which drove them from power<sup>4</sup>. While the ministers shrank from entering upon an open declared war with France in Europe, they showed no lack of vigour in the measures taken to oppose the French designs in America<sup>5</sup>. Spain firmly declined to be drawn into the war and continued to observe a strict neutrality<sup>6</sup>. The position of England on the Continent was likely to be in the future stronger with these changed conditions than with Austria, Bavaria and the Palatinate as fickle allies, together with the hesitating Dutch, who now, notwithstanding Col. Joseph Yorke's zealous efforts, were omitted entirely from the plans of the British government and accepted a neutrality from France. The Indian disaster was soon wiped out by the recapture in December of Calcutta by Clive, who enjoyed the Chancellor's special patronage and encouragement<sup>7</sup>, followed by the great victory of Plassey in June 1757. On October 4, 1756, the King at length acceded to

<sup>1</sup> Ruville's *Life of Pitt*, ii. 77-82.

<sup>2</sup> Waddington's *Louis XV*, 192 sqq.

<sup>3</sup> *Buckinghamshire Corresp.* (Royal Hist. Society), i. 23-32; and H. 37, f. 121, for a letter of Col. J. Y. on its value and importance; though never executed, it was largely the cause of the accession of Frederick to the alliance with England; Waddington, *Louis XV*, 154, 214 sqq., 509.

<sup>4</sup> Waddington, *La Guerre de Sept Ans*, i. 160, quoting memorandum of the Duke of N. of September 12, 1756.

<sup>5</sup> J. C. Corbett, *England in the Seven Years' War*, i. 41 sqq.

<sup>6</sup> Waddington, *Louis XV et le Renversement des Alliances*, 116.

<sup>7</sup> See their Correspondence.

the Princess of Wales's importunate request, made the favoured Lord Bute Groom of the Stole to the Prince, and agreed to the latter's remaining with his mother, by which concessions, it was hoped, the support of Leicester House would be obtained for the government<sup>1</sup>.

With a majority in parliament there was every prospect of the administration weathering the storm in spite of the attacks of Pitt, who advocated the abandonment of Hanover<sup>2</sup>, and who especially denounced the treaty with Prussia as "bought by sacrificing our rights," and one "he would not have signed for the five great places of those who had signed it<sup>3</sup>." On August 29, 1756, Frederick of Prussia, who was kept well informed of the projected attack upon him by Austria, and her allies Russia, Poland, Saxony and Sweden, and France, marched suddenly into Saxony, occupied Dresden, seized the archives, which he published in justification of his conduct, and after an indecisive battle with the Austrians on October 1 at Lobositz, captured the whole Saxon army at Pirna on October 16. The same month relations between France and Prussia were broken off, and there seemed every probability of a successful campaign next year.

But while the ministers were preparing to proceed with their policy and plans a decisive blow was struck at them from within their own ranks. The unscrupulous Fox had joined the Cabinet at the outset with treacherous intentions<sup>4</sup>. He now, on the loss of Minorca, became alarmed at the prospect of being included in the popular censure, and told the Duke of Newcastle that he could not defend him in the House of Commons<sup>5</sup>. He prepared to join in the cry against him, and, "thinking it prudent to avoid the storm," to employ the phrase of his admirer Lord Waldegrave, and in order to escape the discredit of the public misfortunes, or else to take advantage of the weakness and embarrassments of the ministers and to climb to the top upon their ruins, announced his intention of resigning on October 15, 1756<sup>6</sup>. Moreover Murray, who had

<sup>1</sup> pp. 314-5.

<sup>2</sup> Phillimore, *Mem. of Lord Lyttelton*, 481; *Grenville Papers*, i. 146.

<sup>3</sup> Walpole's *George II*, ii. 194; and below, p. 291.

<sup>4</sup> *Grenville Papers*, i. 144, Potter to Earl Temple. "Fox had sent to him [the Duke of Bedford], the strongest assurances that he came in with a view to strengthen himself in the Closet, and to undermine the Duke of Newcastle."

<sup>5</sup> Dodington's *Diary*, 339-46.

<sup>6</sup> Waldegrave's *Memoirs*, 82; Walpole, *George II*, ii. 250; Duke of Bedford's *Corresp.* ii. 199, where Fox's close friend Rigby declares this step justified by "his

long supported the administration with ability and fidelity in the House of Commons, who had shown himself equal to such opponents as Fox and Pitt, and whose assistance was required especially at this crisis, claimed the vacant Chief Justiceship with a peerage, and would take no refusal nor submit to any delay<sup>1</sup>.

The necessity of taking in Pitt now once more confronted the King and the ministers, and the Chancellor again urged the prudence of this step, repeating his conviction that Pitt's objections to measures would vanish with the attainment of his personal aims. Accordingly the King consented to the renewal of negotiations<sup>2</sup>. Pitt, however, had now gained Leicester House, "where those who had thrown even the most indecent reflections on majesty itself, were caressed and honoured with all the nonsense of gracious smiles, mysterious nods and endless whispers<sup>3</sup>." As in similar circumstances on a former occasion, Pitt's terms rose in proportion and proved impracticable. In an interview with the Chancellor, on October 19, in Lord Royston's dressing-room in St James's Square, which lasted 3½ hours, though offered the office of Secretary of State and assured of a good reception by the King, he rejected all Lord Hardwicke's arguments and advice, refused his cooperation and arrogantly announced his determination to serve in no ministry which included the Duke of Newcastle<sup>4</sup>, a person to whom he was indebted for his entrance into political life and whose borough he was at that moment representing in Parliament<sup>5</sup>, whose friendship, together with that of the Chancellor, he had declared only a short time before, "constituted the only honour of his public life<sup>6</sup>," but upon whom almost exclusively now fell the popular odium, who was

treatment from the Duke of Newcastle," but cannot help fearing mankind will attribute it to another motive. Lord Barrington "imputes it chiefly to fear" (Mitchell MSS. Add. 6834, f. 6); below, pp. 318 sqq., 325.

<sup>1</sup> Waldegrave's *Mem.* 59; below, pp. 299-303, 329. There is no foundation for the silly suggestion that the desire to keep Murray in the Commons originated in the Chancellor's jealousy of another law lord in the Peers. Cf. Walpole's *George II*, ii. 224, and see below, p. 477.

<sup>2</sup> pp. 310, 323.

<sup>3</sup> Waldegrave's *Mem.* 62.

<sup>4</sup> *Grenville Papers*, i. 435; below, pp. 322-34; Walpole, *George II*, ii. 257; Phillimore, *Mem. of Lord Lyttelton*, 477; Glover's *Mem.* 83, according to whom Pitt "confounded the meanness of Hardwicke" with his "haughtiness"; and *Grenville Papers*, i. 178, where Pitt announces his intention (October 17 to G. Grenville) to go to the conference 'resolved to give [a negative] to any plan with the Duke of N. at the head of it, as well as to any proposal for covering his retreat.'

<sup>5</sup> See also Pitt's application and letter of thanks and obligation, October, 1753. N. 48, ff. 26, 63.

<sup>6</sup> p. 214.

compromised by failure and who was therefore not to be supported but to be repudiated, attacked and abused<sup>1</sup>.

The Chancellor could only report his failure to the King, and Pitt followed with a prolonged visit, on October 21, to Lady Yarmouth, whom he had previously not condescended to notice, when he took care to make "vast professions to the King<sup>2</sup>."

On October 24 another interview took place between Pitt and the Chancellor, in which the latter communicated the King's refusal of Pitt's demand for the exclusion of the Duke of Newcastle, and of which he has left the following account.

*Relation of my Conference with Mr Pitt, Oct. 24, 1756, Sunday Night. Read to the King in his Closet at Kensington, Tuesday, Oct. 26, 1756 (H. 522, f. 263)*

POWIS HOUSE.

Mr Pitt came to me by appointment.

I acquainted him that I sent to him by the King's command.

That I had very faithfully and very fully related to the King the exact substance of what had passed between him and me on Tuesday last [October 19].

That I was sure I had omitted nothing that was material.

That I related to the King the strong professions which he had made of respect and duty to His Majesty and zeal for his government, and for the support of his real service, as nearly as I could in his own words.

Mr Pitt interposed and returned me many thanks for doing him this justice.

I then told him that I had done this on Wednesday last—that on Friday the King ordered me to attend him on Saturday.

<sup>1</sup> Below, p. 326; cf. Legge to Pitt August 3, 1756, "I fancy it will not be long before you will receive proposals in the spirit of...the drunken man to his friend, to come and roll in the kennel." (*Chatham MSS.* 48).

<sup>2</sup> pp. 329, 332; Phillimore, *Mem. of Lord Lyttelton*, 534; Glover's *Mem.* 83; and Walpole's amusing description (*George II*, ii. 259), "The pages of the Backstairs were seen hurrying about, and crying, 'Mr Pitt wants my Lady Yarmouth.'" According to Lord Shelburne (*Life by Lord Fitzmaurice*, i. 83, autobiography) Pitt's visit to Lady Yarmouth was occasioned by his apprehension "that Lord Hardwicke and the Duke of Newcastle misrepresented what he said in the Closet," and he "thus laid the foundation of cordial support in an important quarter," pronouncing a eulogy of Lady Yarmouth afterwards in the House of Commons. "The old courtiers were confounded with being outdone at their own game, and Lord Bute often told me that he could never have conceived Pitt would have condescended to so much meanness, but Lord Bute with the mass of the people were dupes to the imposture of Mr Pitt's character. There was nothing to which he would not stoop to gain his point; he knew the value of condescension and reserved himself for the moment when he was almost certain of gaining his point by it; till then he pranced and vapoured. He likewise mixed into his conduct strict honour in details, which I have often observed deceive many men in great affairs."

That I did so, and on Saturday the King in his Closet had ordered me to give him an answer, which His Majesty himself had dictated to me, and I would deliver it to him in His Majesty's own words—"The King is of opinion that what has been suggested is not for his and the public service."

Mr Pitt then bowed and said, His Majesty did him the greatest honour in condescending to return any answer to anything that came from him, and desired that I would assure the King of his high sense of it in the most dutiful manner.

I promised him that I would do so tomorrow.

He then repeated over the answer, and I did so again to him in the very same words that I had done before, without the least variation.

He then desired that I would recollect that all that he *had suggested* was by way of objection; that he had not *suggested* anything affirmative as to measures of any kind.

I told him I had related it to the King exactly according to the heads, which he had recapitulated at the end of our former conversation, which I also would do again briefly to him.

1. That it was impossible for him to serve with the Duke of Newcastle.

2. That he thought enquiries into the past measures absolutely necessary; that he thought it his duty to take a considerable share in them, and could not lay himself under any obligation to depart from that.

To this I said that the King was not against a fair and impartial enquiry.

3. That he thought it his duty to support a militia bill, and particularly that of the last session.

I told him that the King and his ministers were not against a militia bill.

4. That the affair of the Hanoverian soldier he thought of great importance; that what had been done ought to be examined, and he thought censured<sup>1</sup>.

5. That if he came into His Majesty's service, he thought it necessary, in order to serve him and support his affairs, to have such powers as belonged to his station, to be in the first concert and concoction of measures, and to be at liberty to propose to His Majesty himself anything that occurred to him for his service originally, and without going through the channel of any other minister.

<sup>1</sup> A Hanoverian soldier in England having taken by mistake six handkerchiefs instead of four while making a purchase and having been arrested for the supposed theft, Lord Holderness at the King's desire, who had been much incensed and had declared "he must send away his troops if they were to be subject to our laws and not to be tried by themselves," had required the Mayor of Maidstone to release him. This "raised a clamour which had echoed throughout the Kingdom, promoted by no one more than Mr Pitt, who talked in a very high strain to Lord Hardwicke on the subject." *Glover's Memoirs*, 89. The zealous constitutionalists were in the end satisfied by the infliction upon the unfortunate foreigner, of 300 lashes. *Walpole, George II*, ii. 248; *H.* 68, f. 34; see further, p. 376.

He admitted that these were truly the points—and then desired or hinted to be informed—whether this was to be considered *as an answer to the whole*<sup>1</sup>.

I told him that I related the answer in the King's own words. It was the King's answer, and I could add nothing to it, nor take upon me to explain it. That I understood that he was to take it *as an answer to everything that had been conveyed by him, Mr Pitt, to the King*.

He then repeated his deep sense of the King's condescension in giving him any answer. But he would say to me only, *as from one private gentleman to another*, that he would not come into the service, in the present circumstances of affairs, upon any other terms, for the whole world.

I then said that undoubtedly he must judge for himself, but I would also say to him, *as from Lord Hardwicke only to Mr Pitt*, that as he professed great duty to the king and zeal for his service, and I dared to say had it; that as he had expressed an inclination to come into His Majesty's service, in order *really* to assist in the support of his government; that as he was a man of abilities and knowledge of the world; that as men of sense, who wish the end, must naturally wish the means, why would he at the same time make *the thing* impracticable?

To this he answered that he would say to me *in the same private manner*, that he was surprized that it should be thought possible for him to come into an employment to serve with the Duke of Newcastle, under whose administration the things he had so much blamed had happened, and against which the sense of the nation so strongly appeared, and I think he added, which administration could not possibly have lasted, if he had accepted.

In answer to that I said some general things in the same sense with what I had mentioned on that head on Tuesday last.

He then rose up, and we parted with great personal civility on both sides.

It was now clear that the Newcastle administration could no longer continue, and the Duke and Chancellor offered their resignations on October 26<sup>a</sup>. A union between the two great champions of opposition, Fox and Pitt, seemed the most probable arrangement for carrying on the government, and the King on October 27 ordered Fox to settle an administration. Pitt, however, contemptuously declined any alliance in that quarter, and conscious of his own

<sup>1</sup> Pitt's meaning was, was it an answer to the suggestions made by him to Lady Yarmouth also? p. 332.

<sup>2</sup> According to Walpole (*George II*, ii. 260), "the Chancellor, sullen and mortified, protested he would follow his Grace, but endeavoured to encourage him to stand alone, affirming they could carry everything by their numbers; and having ever been ready to torture the law to annoy his enemies, he could not help expecting to find the same support from it for himself and his friends."

power and value refused to collaborate with any cabinet in which he was not himself paramount<sup>1</sup>. "I am sure," he is reported by Walpole to have told the Duke of Devonshire, "I can save the Country, and nobody else can<sup>2</sup>." By his desire, therefore, and with Lord Bute's support, the Duke of Devonshire<sup>3</sup> was entrusted, on October 29, by the King with the formation of a new administration in which Pitt became Secretary of State with the chief power, Lord Temple first Lord of the Admiralty, Legge Chancellor of the Exchequer, George Grenville Paymaster of the Navy and James Grenville a Lord of the Treasury. Lord Holderness and Lord Granville retained their offices and Lord Halifax returned to the Board of Trade. Lord Anson and the Duke of Newcastle<sup>4</sup>, against whom the popular clamour was especially, though unjustly, directed, retired from office on November 16.

They were followed on November 19 by the Chancellor himself, who on that day delivered the Great Seal into the King's hands. His continuance in office and his support were much desired by the new government and great efforts were made to persuade him to remain, but loyalty to the Duke of Newcastle who urgently pressed his resignation, and the prospect of working separated from his old friends, with new and untried colleagues, fixed his resolution. The fatigue incumbent on his laborious legal office so long supported, moreover, rendered retirement not unpleasing<sup>5</sup>; and he now laid down his great charge as head of the Law and Speaker of the House of Lords after a service of 19 years and 8 months and 16 days, the longest on record, excepting that of Lord Ellesmere and that afterwards of Lord Eldon<sup>6</sup>. He resigned without asking or receiving any of those lucrative rewards invariably bestowed, in the absence of

<sup>1</sup> Dodington's *Diary*, 346; Walpole, *George II*, ii. 262; *Letters*, iv. 7 sqq.; Phillimore, *Lyttelton*, 533; *Bedford Corresp.* ii. 205-7; Glover's *Mem.* 95; *Hist. MSS. Comm. Rep.* viii. 222; below, p. 333.

<sup>2</sup> *George II*, iii. 84.

<sup>3</sup> William, fourth Duke of Devonshire, who had succeeded in 1755 on his father's death (see p. 113 n.). See his letter on this occasion to Lord H. desiring that the Chancellor will stand his "foremost friend," as he had his father's. H. 245, f. 350.

<sup>4</sup> He had acted, testifies Lord Lyttelton, "with great dignity, prudence and moderation in this revolution." *Memoirs*, 545.

<sup>5</sup> p. 334; cf. Walpole, *Letters*, ii. 348, December 2, 1748, "We talk much of the Chancellor's resigning the seals from weariness of the fatigue and being made President of the Council." The report was current once more in 1750 (*ib.* iii. 23), and he had himself proposed to resign on the formation of the new ministry in 1754, H. 244, f. 304.

<sup>6</sup> "I heard him [Lord H.] own that he wished to retain the Seals three weeks longer, that he might have had the satisfaction of holding them a few days beyond Lord Ellesmere." W. G. Hamilton, October 4, 1779 (*Hist. MSS. Comm. Rep.* viii. 203).



similar provision payable from the Civil List, upon officers of state on their quitting the King's service, and was followed in his retirement, says a political opponent, "with the regret of all dispassionate men and indeed of the nation in general<sup>1</sup>."

His mantle fell on his son Charles Yorke, whom he had sworn in as Solicitor-General, on November 3.

Primo avulso non deficit alter  
Aureus, et simili frondescit virga metallo.

## CORRESPONDENCE

*Hon. John Yorke to Lord Royston*

[H. 26, f. 102.]

POWIS HOUSE, July 20, 1754.

...[Joe] had an audience of the King before he set out, who commended his conduct in Holland beyond what he had ever done before, and even said that "nobody else *could* or *would* do so well. You have found the way to treat with those people." This strong approbation and the assurances given in a certain conversation, of which he probably told you at Wrest, have sent his Excellency off in very good humour and spirits. At present too he is the reigning favourite at N[ewcastle] House, after having made a second visit at Claremount, picked the pockets of his Grace and all his company of upwards of £100 for M<sup>r</sup> Parisot's tapestry<sup>2</sup>, and dared to commend Hackney School<sup>3</sup>. As he was passing through the Drawing Room, after he had had his last audience, M<sup>r</sup> Fox came up to him with a most smiling countenance and begged, whenever he had anything to do in his way, he would honour him with his commands, and assured him he would not fail to put the K[ing] in mind of him. Added to this, a thousand apologies about visiting and not visiting passed: and so they grinned, and lied, and parted. We have been much entertained with this scene, and as far as we could, astonished at such modesty. It seems by his present behaviour as if he hoped to bring about, by soothing and flattery, what he has found impracticable, by intrigue and violence....

[On October 2, 1754 (N. 52, f. 24; H. 66, f. 197), the Duke of Newcastle desires the Chancellor's advice on the expedition to North America—"I must beg your Lordship's opinion upon the whole. I cannot take upon me to determine finally without it."

<sup>1</sup> Lord Waldegrave, *Memoirs*, 84.

<sup>2</sup> Pierre Parisot (1697-1770), Roman Catholic monk and later, in 1736, parish priest of Pondicherry, author of *Mémoires Historiques* (1747), in which the methods of the Jesuits in obtaining conversions were exposed. In consequence, being obliged to live abroad, he came to England and established a tapestry and Turkey carpet manufactory at Paddington, under the patronage of the Duke of Cumberland. Subsequently, under the name of Platel, he returned to France, visited Portugal and underwent persecutions.

<sup>3</sup> Where the Chancellor's sons received their excellent education.

On October 12 (H. 66, f. 200) he complains of the Duke of Cumberland's and Fox's conduct in extending the scope of the expedition, of the "advertisement in the Gazette" and of "the alarm being now given."—"Pitt and Fox were near three hours alone the other day."]

*Lord Chancellor to the Duke of Newcastle*

[N. 52, f. 147.]

WIMPOLE, Oct. 13, 1754.

...I am extremely sorry that your Grace has so much trouble about the concert and preparations for the N. America expedition.... As to the *fond* of the affair, the expedition itself, I mean as consisting of the several parts, I never apprehended that would be altered, considering the *great Person*<sup>1</sup> with whom it was concerted. I remember it was always so during the late war. Your brother frequently threw in objections and struggled a little, but such as was the opinion of that great person, such was the King's, and that finally prevailed. The precipitation with which Mr Fox has pushed this affair, and the giving orders in His Majesty's name without his knowledge, are a fresh proof how fond some people are of power, and what use they would make of it, if they were in. I never was more surprized in my life than when I saw the advertisement in the Gazette; for if I remember right, it was agreed at the Kensington Conference, that everything should be done with as much secrecy and as little éclat as possible. I did not doubt but such a pompous, formal notification would produce much alarm and enquiry amongst the foreign ministers....I think there is an affectation in some persons to make a parade with this affair, and a design to make use of it to let themselves again into business....

These long conferences between Pitt and Fox are very remarkable<sup>2</sup>. I suppose in time fire and water may agree. However, it may possibly produce quiet, if not support, from Mr Pitt's quarter, as to the measure of the N. American expedition and the expense of it. Indeed I judg'd from the account, which your Grace gave me of that gentleman's conversation with you<sup>3</sup>, that it looked as if he was determined to have no demerit with the Duke....

[On June 7, 1755 (H. 66, f. 272), the Duke of Newcastle desires the Chancellor's opinion on the important subject of the orders to be given to the fleet, whether to attack the French ships or not; the Duke himself being against such direct hostilities, without a declaration of war and while the French ambassador was negotiating

<sup>1</sup> Duke of Cumberland.

<sup>2</sup> See above, p. 194.

<sup>3</sup> f. 24.

in England, as exposing the nation to the charge of breach of faith and alarming her allies. He desired, too, to confine hostilities to America and not to bring on a European war with France, for which they were by no means ready. There were, however, many arguments on the other side.

The Chancellor is to weigh all and advise.

He recurs again in another letter to the same subject.]

[H. 66, f. 284.]

June 30, 1755.

MY DEAR LORD,

I have been so uneasy at what *may* be the consequences of the resolution taken last night, viz: to send Hawke with hostile orders, which hostile orders, as explained by my Lord Anson, must now be the committing general hostilities upon France in Europe, even before we hear from America, that I cannot avoid submitting to your Lordship some considerations which may perhaps tend to the avoiding those ill consequences, without directly putting a negative upon the Duke's proposal. I own I tremble, when I reflect that we shall begin a war in Europe without one single ally. ...We may very probably force Spain to take part with France....If we justify it by the hostilities began by France in America, we should not have negotiated nine months afterwards. [The best opportunities of attacking the French fleet too had been allowed to slip by.] What should we have said of France if, on account of our American disputes, they had four months ago invaded us with 20,000 men, or now taken our East India ships in their passage home? God knows how they may resent this, which they will call breach of faith and treaties. The most probable thing is an immediate attempt upon Hanover....Suppose they should in revenge take the King prisoner. [He concludes by advising the modification of the orders to Hawke.]

[Writing on June 30, 1755 (N. 171, f. 400), in answer to the Duke, the Chancellor submits that the Duke himself is the proper person to open the discussion in the Council.] Upon my word, I don't mention this to throw anything off from myself, but for the propriety and appearance. It will have an odd appearance for a Chancellor, a lawyer, sitting there in a gown, to begin to lead the Council on such a subject, and with some may be the subject of ridicule. If your Grace shall not upon consideration think fit to do it, I really think my Lord President [Lord Granville] should. He is an old statesman and a great warrior—American at least....

*Lord Chancellor to Lord Royston*

[H. 3, f. 312.]

POWIS HOUSE, Aug. 12, 1755.

...As to our situation here, it is likely to grow more serious and busy every day. You know our success upon the Isthmus of Nova Scotia<sup>1</sup>, which is very material, after the *too little* and *too much*<sup>2</sup> that happened at sea....

God send a good issue to all these things. The oldest man living never saw such a scene, wherein Great Britain is alone and *proprio Marte* to cope with France. 'Tis a time of great thoughtfulness and anxiety.

In the midst of all this your Mother and I propose to set out for Wimpole tomorrow morning. How long I shall be suffered to stay, I don't pretend to guess, but fear I shall be very movable. We shall take with us our pretty companion, Lady Bell<sup>3</sup>, who is very jolly and pretends to please herself with the thoughts of going to Wimpole. She and I were examining her picture today, and I commended the goodness and quietness of *that little girl*, upon which she replied, *But she turns in her left foot*, which is true. So jealous is she lest the shadow should be thought better than the substance. She presents much duty and asks blessing....

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 8, f. 358.]

HELVOETSLUYS, Sept. 13th, 1755.

...We dine with his Majesty every day at one o'clock, with the Countess [of Yarmouth], Lord Holderness, Lord De la Ware, Lord Weymouth, Baron Münchhausen<sup>4</sup> and Baron Wedel, the Hanoverian *Chambellan*, who crosses the sea with Lord Anson. The King eats with a better appetite than any of us and is, thank God, as well as ever I saw him. The only change I can perceive is, that I think he does not hear quite so well<sup>5</sup>. I began to think I should not be talked to upon business at all this journey, but this

<sup>1</sup> The French fort of Beauséjour on the Bay of Fundy was captured by Colonel Monkton on June 16, 1755.

<sup>2</sup> Admiral Boscawen had attacked the French fleet but had only succeeded in capturing two ships. The Chancellor writes in the same sense to Lord Anson expressing his disappointment at the result and adding: "It gives me much concern that so little has been done, since anything has been done at all." (Barrow's *Life of Anson*, 237). It will be remembered that the Chancellor was opposed to the declaration of the continental war.

<sup>3</sup> Lord Royston's little daughter.

<sup>4</sup> Hanoverian minister.

<sup>5</sup> This was the old King's last visit to Hanover. He had expressed great vexation at the prospect of returning to England. "There are Kings enough in England. I am nothing there. I am old and want rest, and should only go to be plagued and teased there about that d——d House of Commons." N. 172, f. 553.

morning the King saw me in the Countess's apartment and sent for me, when he kept me for near an hour and was as gracious and free as possible, without pushing me so far upon any point as to embarrass me. The topics he talked upon were, the backwardness of the States but commended his daughter's behaviour, mentioned the Court of Vienna with the highest indignation, and said the time might come when the House of Austria might repent its behaviour towards England. The delicate point he touched upon was the *Ohio* affair, and there I fought off for reasons obvious to your Lordship, but I find his Majesty has a true notion of it already. He asked me what people said of it, to which I answered, that it was thought from the accounts published that the troops had not fair play. His Majesty then said that Braddock had neglected the common rules of war, but that "he wash'd his hands of it as he did not choose him, for that his son had recommended him, and he owned he had been surprised at it, at the time." To this he added some abuse upon the soldiers, which they deserve, commended the private officers and spoke with pleasure of the Americans (of which I think a good use may be made). As I was afraid this conversation might grow too particular<sup>1</sup>, I tried to turn it and succeeded, by comparing this action with that of Wynendale, where the French under Mo<sup>r</sup> la Motte, to the number of 30,000, were beat by General Webb with 6000<sup>2</sup>. This led H.M., who made that campaign in the allied army, into a wide field, which amused him, and kept me free of entering too far into an affair which I did not wish to be pushed upon. Upon the whole I have reason to be satisfied. The King enquired kindly after your Lordship, and is as good humoured and as patient as if the wind was fair, and we had no crosses in our operations either by land or sea. I wish with all my heart he may continue so when he gets amongst you\*....

*Col. the Hon. Joseph Yorke to the Earl of Holderness*

[N. 177, f. 426.]

HAGUE, Feb. 10, 1756.

...The court of France has, I am assured, in most parts approved Marshal Belleisle's plan, and he himself is charged with the execution and is expected tomorrow at Dunkirk. He proposes to assemble a hundred thousand men upon the coast from Cherbourg to Dunkirk, the rest of the French troops to cover the frontiers, as I formerly mentioned. By this manœuvre he supposes that he shall give us equal uneasiness for the Southern and Western parts of our coast

<sup>1</sup> *I.e.* in relation to the Duke of Cumberland's responsibility.

<sup>2</sup> See the *Dict. of Nat. Biog.* under General John Richmond Webb for account of this incident in the Marlborough campaign of 1708 (September  $\frac{1}{8}$ ), where the number of the enemy is, however, given as 22,000, and Fortescue, *Hist. of the British Army*, i. 507.

\* N.B. Braddock's conduct was much blamed, and undoubtedly he was an officer of no science, but in this instance the men were most in fault. He had advanced parties, and they gave way at the first fire and fell back on the main body. H.

and oblige us to separate our force. To facilitate this operation, he proposes that orders should be given (and it is pretended they are already sent) for equipping 12 ships of the line and 12 frigates more at Brest, the places for disembarking to be settled as opportunity shall serve, but which they are, I am yet to learn. His intention, however, is to prepare three attacks, two of which to be feints, but the real one to be in the West of England. The Marshal demands 600 sail of transports for this service, each ship to carry 100 men, and he proposes to employ the smugglers of Kent, Sussex and Hampshire for his pilots, as the most knowing of any for the purpose. As many persons had objected to the difficulties there would be in the execution of this plan, the Marshal has presented several memorials to explain his designs and, amongst other things, he says that the scheme may be very feasible in a fresh southerly wind, a dark night, a fog or a stark calm, because, in any of these cases, the fleets of England could not come to intercept their passage.

Besides this great though, I hope, very difficult project, it is intended to second it with an embarkation upon the coast of Provence, where 30,000 men are ordered to assemble, and to make an attempt upon the island of Minorca, which is represented as no very difficult undertaking.

[He does not vouchsafe for the truth of this account but observes that it is conformable to the language of the French minister at the Hague. Immense preparations were being made upon the sea coast, and quantities of stores transported to Dunkirk.]

*Duke of Newcastle to Col. the Hon. Joseph Yorke at the Hague*

[H. 177, f. 430.]

NEWCASTLE HOUSE, Feb. 10, 1756.

DEAR SIR,

It is with the greatest pleasure that I can now thank you for your very kind and able letters<sup>1</sup>...because I can assure you, that the King has expressed himself upon them and upon your conduct, in this very nice and critical conjuncture, with all the marks of approbation, satisfaction and regard possible. His Majesty has lately talked very often to me upon your subject, how prudently, how ably, and how successfully you had conducted yourself, and this day particularly said in a very emphatical manner, how well you did, and how considerable you would be, or to that effect. This gave me the most sincere pleasure....I have seen your reasonings in your private letters to Holderness about the French preparations and motions on the coast. For my part, I own, my opinion is that they are so irritated, think their honour so much wounded and are so much governed by that hot-headed Marshal Belleisle, that I do think they will make an attempt, and most

<sup>1</sup> N. 177, ff. 153 and 239, dealing with affairs in Holland and the reception of the news of the treaty with the King of Prussia.

probably more than one, upon parts of our coast. They will have 100,000 men just over against us; they have quantities of cannon, artillery etc: of all sorts, and what should prevent them from risking 20,000 or 30,000 men to revenge themselves of this country, whilst they have nothing to fear in any part of the world? For this reason we are determined to be as strong as we can. We have sent for the Hessians and, I hope, we shall soon have the Dutch from you!....ever most affectionately yours,

HOLLES NEWCASTLE.

*Col. the Hon. Joseph Yorke to the Lord Chancellor*

[H. 9, f. 9.]

HAGUE, February 17<sup>th</sup>, 1756.

...I must approve, and so must every man of common sense, all the precautions you are taking for your security. It is the surest way of preventing the attempt, which I don't quite believe France will make, notwithstanding her preparations which are tremendous, I confess, except in ships for transporting. I can't help a little wondering that you are in want of intelligence from the opposite shore, but good is not to be had without money....

The Treaty with Prussia does not lose ground here and it has affected France a great deal, tho' they affect to hide it...

*Admiral the Hon. John Byng to Mr Secretary Cleveland*

[*Trial of Admiral Byng* (1757), app. v.; Beatson, *Naval and Military Memoirs*, i. 468.]

Ramillies IN GIBRALTAR BAY, May 4, 1756.

SIR,...

I arrived here with the Squadron, under my command, the 2<sup>nd</sup> instant in the afternoon, after a tedious passage of twenty seven days, occasioned by contrary winds and calms; and was extremely concerned to hear from Captain Edgcumbe, who I found here with the *Princess Louisa* and *Fortune* sloop, that he was obliged to retire from Minorca, the French having landed on that island, by all accounts from thirteen to fifteen thousand men....

If I had been so happy to have arrived at Mahon, before the French landed, I flatter myself, I should have been able to prevent their getting a footing on that island; but as it has so unfortunately turned out, I am firmly of opinion, from the great force they have landed, and the quantity of provisions, stores and ammunition of all kinds they brought with them, that the throwing men into the Castle will only enable it to hold out but a little time longer, and add to the number that must fall into the enemy's hands<sup>1</sup>; for the garrison in time will be obliged to surrender, unless a sufficient number of men could be landed to dislodge the French

<sup>1</sup> The forces which by treaty could be demanded by England from Holland in case of an invasion, but which were eventually refused.

<sup>2</sup> See Blakeney's evidence to the contrary, p. 270 n.

or raise the siege. However I am determined to sail up to Minorca with the squadron, where I shall be a better judge of the situation of affairs there, and will give General Blakeney all the assistance he shall require; though, I am afraid, all communication will be cut off between us, as is the opinion of the chief engineers of this garrison....It is to be apprehended when they [the French] have got all the ships they possibly can, ready for service, they may think of turning their thoughts this way. If I should fail in the relief of Port Mahon, I shall look upon the security and protection of Gibraltar as my next object, and shall repair down here with the squadron, and hope their Lordships will approve of that measure.

[Then follow complaints of the absence of stores at Gibraltar and of the condition of the wharf and of the "inconveniences we shall meet with here."]

By a council of war,...it was not thought proper to send a detachment equal to a battalion for the relief of Minorca, as it would evidently weaken the garrison of Gibraltar, and be no way effectual to the relief of that island for the reasons therein given. [A detachment of men had, however, been sent on board the ships commanded by Captain Edgcumbe to replace those that had been landed at Minorca.] We are employed in taking in wine and completing our water with the utmost dispatch, and shall let no opportunity slip of sailing from hence<sup>1</sup>....

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 91.]

HAGUE, May 7, 1756.

...Today I can't enter into Dutch politics which, bad as it is, is not worse, in my opinion, than English, for by our letters from Paris it is certain now that Marshal Richelieu landed at Ciudadela on the Island of Minorca the 18<sup>th</sup> April, that the forces and ammunition were landed between that and the 20<sup>th</sup>, that our garrison of 300 men retired on their approach, as did likewise that of Fornel, both to St Philip's, where the only opposition can be made. Marshal Richelieu sent next day a detachment to take post at Meccadal, which is about half way to Mahon, and proposed to follow the next day with the rest of the army. Our people upon retiring destroyed everything they could, and took away all the horses and mules, so that in one account I saw it was said that the French would be obliged to send their artillery by sea to some creek nearer St Philip's, upon account of the difficulty of transporting it by land. The French letters pretend likewise that Commodore Edgcumbe<sup>2</sup> was in the harbour of Mahon with 2 men of war and 3 frigates, and had been obliged to take out his guns to assist in the defence of the place. I hope this is not true,

<sup>1</sup> See further, May 25, p. 291.

<sup>2</sup> George, afterwards first Earl of Mount Edgcumbe.



because it would then seem to me very difficult for him to join Mr Byng, whom Mr de la Galissonnière is said to be gone to meet, in order to intercept his arrival at Mahon; and unless Mr Byng has more force than what he sailed from England with and is not joined by Mr Edgecumbe, I fear the French will be an overmatch for him<sup>1</sup>, and it will be indeed a great reproach to our conduct if we lose Minorca and are beat by sea, by an enemy we despise because of our superiority upon that element. From what you mention I am afraid the Admiralty has been deceived in its intelligence about the strength of the Toulon squadron, and yet I don't know how that can be possible; for all the accounts sent over from these parts have always made them 10 ships of the line, two 50 gun ships besides frigates, and I hope therefore they have not some intelligencer who is paid to deceive them. You must excuse my being out of humour to-day, for I can't help being sensibly hurt at our conduct which I think preposterous and unaccountable. What have our fleets been lying in harbour for so long? Not for fear of the invasion, for that has never yet been probable and I have always asserted it, because I did not care sixpence for a 100,000 men upon the coast opposite to you, when I did not see 10 ships to convey them, and to this minute they have not vessels enough to carry 2000 men. I am afraid the Administration will have brought a storm upon itself which will not be easily laid, and how they will satisfy the public is a secret I should be glad to know, for I live amongst people we have been abusing these 15 years for neglect, and I don't see we are a bit better; in a word, Europe cries out upon us, and we have sad uphill work to go through. It will become them to retrieve the credit of the nation and the credit of their boasted superiority by sea, which has not yet had the good luck to prevent the French from doing what they pleased....

*Duke of Newcastle to the Lord Chancellor*

[N. 179, f. 486.]

NEWCASTLE HOUSE, May 8, 1756.

MY DEAR LORD,

Your Lordship will have heard of the extraordinary debate in the House of Commons yesterday where, I think, Mr Pitt laid everything that was blamed upon me, though he varied his discourse at times. He made great compliments to my Lord Anson and the Admiralty all at my expense. I am not able to bear this weight, especially for measures where others have the principal, if not the sole, direction. Mr Pitt went so far to charge the loss of Minorca as a design in order to justify a bad peace. I send your Lordship a most extraordinary letter from Mr Fox

<sup>1</sup> These apprehensions were unfounded, see p. 270.

and copy of my answer<sup>1</sup>. I see plainly where Mr Fox would lay all blame viz: the not augmenting our force at home; when he, *in opposition* and conjunction with Mr Pitt, pretended it should have been done. Lord George Sackville's part is abominable<sup>2</sup>. Things must not remain upon this foot.

...

ever yours,

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 179, f. 504.]

POWIS HOUSE, May 9, 1756, at night.

[Approves the Duke's answer to Fox and proceeds] I had heard some account of Friday's debate but not that quite so much distinction was made, as had been represented to your Grace. Some there certainly was, but everybody was brought in in their turns, either with blame or ridicule. Opposers in Mr Pitt's situation will always principally strike at the first. There is in that a mixture both of malice and of politics. As to his scheme of wilfully intending to lose Minorca in order to make a bad peace, it was scouted and ridiculed by everybody. When I came home from Westminster, at the same time I received the honour of your Grace's letter, I received a notice of a meeting with a request to me to appoint the place, which I did at the Admiralty. I found there Lord Holderness, Lord Anson, and Mr Fox, and that the business was the relief proposed to be sent to Port Mahon at present....

*Hon. John Yorke to Lord Royston*

[H. 26, f. 134.]

LINCOLN'S INN, May 13, 1756.

[Describes the debate in the House of Commons the day before.]...Pitt fired a broadside from his first rate: he spoke long and well....He drew a very melancholy picture of our situation and laid it thick on the ministers. He compared the Duke of Newcastle to a child in a go-cart upon the brink of a precipice, and that it was but common humanity to stop it, or to admonish the child's nurse of its danger (especially if it was a good *shrewd* nurse, and then turned to Fox). He said he would not have

<sup>1</sup> ff. 478 and 483. Fox wrote: "Mr Pitt has taken the liberty to blame your Grace as well as others today. I answered as well as I could, but the loss of Minorca is a weight that it is not easy to debate under." The Duke had answered, "You must remember what was constantly said when this question was before us: that the *heart* must be secured in the first place...."

<sup>2</sup> He had said "that the danger Minorca was in, was a proof of our not being sufficiently, or early enough, armed at home." f. 479.

set his hand to the Declaration, by which we are to give the King of Prussia £20,000, for all the great offices conjointly<sup>1</sup>....

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 93.]

HAGUE, May 18, 1756.

...The last letters the Court [of France] own from Mon<sup>r</sup> de Richelieu are of the 28<sup>th</sup> past, in which he complains of the difficulties he meets with and the impossibility of being able to begin the attack against the Fort in less than ten or twelve days. He says too as certain that M<sup>r</sup> Edgecumbe was got out of Mahon with the men of war and had taken away the French prisoners, and that the English had abandoned Fort Phelipet, from whence he had been to examine the place. I suppose the Governor abandoned that Fort when M<sup>r</sup> Edgecumbe went away, for as it is on the opposite side of the harbour, it would have inevitably fallen into the Enemy's hands; and now, if the heavy cannon don't arrive before M<sup>r</sup> Byng, it is to be hoped that the French on their side may likewise be forced to abandon it again, if once our men of war come into the harbour. I have had a letter today to inform me that there are private letters from Mahon of the 2<sup>nd</sup> instant, by which it was certain the trenches were not then opened and that it was found impossible to bring the heavy train up without horses, which with mules were to be sent for from Marseilles; and if that is so, their siege will go on very ill, especially if Mon<sup>r</sup> de la Galissonnière should have a check and our garrison commit no great blunder. Upon the whole that affair looks a little better than it did; and if we can get out of it with credit, it will be a very happy event for us....

*Admiral the Hon. John Byng to Mr John Cleveland, Secretary of the Admiralty*

[*Trial of Admiral Byng* (1757), app. xix.]<sup>2</sup>

*Ramillies* OFF MINORCA, May 25 [1756].

SIR,

I have the pleasure to desire you will acquaint their Lordships that having sailed from Gibraltar the 8th, I got off Mahon the 19th, having been joined by his Majesty's ship "Phoenix" off Majorca, two days before, *by whom I had confirmed the intelligence I received at Gibraltar, of the strength of the French fleet and of their being off Mahon. His Majesty's colours were still flying at the castle of St. Philip's, and I could perceive several bomb batteries playing*

<sup>1</sup> The speech described also by Walpole, *George II*, ii. 193, and *Parl. Hist.* xv. 703, where the date is May 11.

<sup>2</sup> The words in italics being those suppressed by the administration (see below, p. 340), and those within brackets additions; also *Gent. Mag.* xxvi. 483; and *London Gazette*, June 26, 1756, No. 9594, where the abridged letter is published and expressly headed "Extract of a letter from Admiral Byng."

upon it from different parts; French colours we saw flying on the west part of St. Philip's. I dispatched the "Phoenix," "Chesterfield" and "Dolphin" ahead to reconnoitre the harbour's mouth and Capt. Hervey to endeavour to land a letter for Gen. Blakeney, to let him know the fleet was here to his assistance, tho' everyone was of opinion we could be of no use to him; as by all accounts, no place was secured for covering a landing, could we have spared any people. The "Phoenix" was also to make the private signal between Capt. Hervey and Capt. Scrope, as this latter would undoubtedly come off if it were practicable, having kept the "Dolphin's" barge with him; but [when] the enemy's fleet appearing[ed] to the S.E. and the wind at the same time coming strong off the land, obliged me to call those ships in, before they could get quite so near the entrance of the harbour as to make sure what batteries or guns might be placed to prevent any communication with the Castle. Falling little wind, it was five before I could form my line or distinguish any of the enemy's motions and not at all to judge of their force more than by their numbers which were 17 and 13 [of those] appeared large.

[Then follows the description of the battle published entire including the admiral's signal, on the fleets going into action, for the "Deptford" "to quit the line that ours might become equal with theirs" and his statement that the French ships "went three feet to our one," which occasioned much comment, omitting only the word *unfortunately* in the clause, "The 'Intrepid,' *unfortunately*, in the very beginning had his fore-top-mast shot away," and that of *very greatly* in the sentence "whose loss would give *very greatly* the balance against us."]

I sent cruisers out to look for the "Intrepid" and "Chesterfield" who joined me the next day; and having from a state and condition of the squadron brought me in, found that the "Captain," "Intrepid" and "Defiance" (which latter has lost her Captain) were [very] much damaged in their masts, so that they were endangered of not being able to secure their masts properly at sea, and also that the squadron in general were very sickly, many killed and wounded<sup>1</sup>, and nowhere to put a third of their number, if I made a hospital even of the forty gun ship, which was not easy at sea, I thought it proper in this situation to call a council of war before I went again to look for the enemy. I desired the attendance of Gen. Stuart, Lord Effingham and Lord Robert Bertie and Colonel Cornwallis, that I might collect their opinions upon the present situation of Minorca and Gibraltar, and make sure of protecting the latter, since it was found impracticable to either succour or relieve the former with the force we had; for though we may justly claim the victory, yet we are much inferior to the weight of their ships, though the numbers are equal, and they have the advantage of sending to Minorca their wounded, and getting reinforcements of seamen from their transports and soldiers from their camp; all which has undoubtedly

<sup>1</sup> The actual number of the British casualties was 211 of whom 43 were killed; see p. 271.

been done in this time that we have been lying to to refit and often in sight of Minorca; and their ships have often more than once appeared in a line from our mastheads. I send their Lordships the resolution of the council of war; in which there was [at which Council] not the least contention or doubt arose<sup>1</sup>. I hope indeed we shall find stores to refit us at Gibraltar and if I have any reinforcement, will not lose a moment's time to seek the enemy again and once more give them battle, though they have a great advantage in being clean ships that go three feet to our one, and therefore have the choice how they will engage us, or if they will at all, and will never let us close them, as their sole view is the disabling our ships in which they have but too well succeeded, though we obliged them to bear up. I do not send their lordships the particulars of our losses and damages by this, as it would take me much time and that I am willing none should be lost in letting them know an event of such consequence. I cannot help urging their lordships for a reinforcement, if none are yet sailed<sup>2</sup>, on their knowledge of the enemy's strength in these seas, and which by very good intelligence, will in a few days be strengthened by four more large ships from Toulon, almost ready to sail, if not already sailed to join these. I dispatch this to Sir Benjamin Keene<sup>3</sup>, by way of Barcelona, and am making the best of my way to cover Gibraltar; from which place I propose sending their lordships a more particular account. I am, Sir,

Your most humble servant

J. B.

P.S. I must desire you will acquaint their Lordships that I have appointed Capt. Hervey to the command of the "Defiance," in the room of Capt. Andrews slain in the action.

I have just sent the defects of the ships, as I have got it made out whilst I was closing my letter.

*Admiral the Hon. John Byng to Lord Anson*

[H. 547, f. 25, copy.]

*Ramillies OFF MINORCA, May 25, 1756.*

MY LORD,

My public letter to your board will acquaint you in general of our motions, but think it is proper to let your Lordship know very particularly not only whatever occurs but also whatever inducements there may be to any steps which may not always be so proper to go through the various inspection that a public letter must necessarily do, and therefore my Lord I shall tell you that when I sailed from Gibraltar I found it was the general opinion not to leave that place when there was so little, if any hopes of relieving Minorca, and [? not] much more of hoping for the success we have had against a fleet superior to ours, but the many

<sup>1</sup> See p. 271.

<sup>2</sup> See p. 272.

<sup>3</sup> Ambassador at Madrid.

advantages they have of being reinforced from their camp, and landing their sick and wounded ashore, and the weight of their ships made it evident to me after a trial which I was determined to make that no further risk should be [*sic*] of His Majesty's fleet, lest by any irreparable accident Gibraltar should become exposed, for though my Lord we have evidently beat the French yet it was only so that we may call the victory ours since some were drove out of the line, though they recovered themselves when to leeward and rallied by their Admiral who bore down the whole time to join them. Indeed it was in their power to fight us on if they pleased, as we continued on our spot and have never but lain too [*sic*] since, for if the French had returned again however precarious it might be I should have thought we were too much concerned to have retired in their sight, and if a more complete victory could be gained of them (which is in their option) yet I cannot think it would have availed for His Majesty's service in our situation, as we could not hope to engage again with these cripple ships without being more disabled, and you know my Lord what a distance we have to carry them to, to refit, and when we come there we have no stores of any kind, so that I should have thought myself unpardonable on all these considerations to have risked another battle. I wish some of our officers had been more expert at lines of battle in engagement[:]; we should have gone down more regular and our ships would have been less exposed to have been raked in going down, and though we could never have hoped a complete victory yet we might have been less disabled, and probably have disabled them more, as I saw none visibly hurt but the ship that bore up from me, who had his main top sail yard shot away. I have sent the Board the resolution[s] of the Council of War for our retiring to Gibraltar and cannot help telling your Lordship that they would have been more numerous, but I put a stop to the reasons being expressed for these resolutions, which were only inflaming people at our being so weak with regard to the French fleet and left without stores, or hospital ship, or any visible manner of being of service to Minorca when arrived there, where the French had been above a month landed, much more on this subject but I cut all short by saying we had no business with these reflections, I only wanted the opinion of the gentlemen for our future motions to be a government to my judgment in the execution of my instructions. I hope to hear from your Lordship very shortly, and hope for a reinforcement of ships, that I may seek again the enemy and recover their present command of that part of the Mediterranean, which now exposes all our commerce as I am not able to send any ship to support it.

As to Minorca the enemy have 17,000 men there, and I fear the Castle will shortly be obliged to surrender, it was invested in such a manner that it would be impossible to have thrown in this regiment on board the squadron could we have spared them. I wish it may ever be practicable to starve their army by cruisers

about the island when we have the superiority of these seas without endangering Gibraltar.

I hope your Lordship enjoys perfect health and am with the greatest respect your Lordship's most obedient humble servant

J. BYNG.

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 95.]

HAGUE, May 28, 1756.

...I shall not be sorry to hear that the Parliament is separated, and that the Cabinet are acting in one united body against the common enemy; for the disputes, which reign amongst you and which make a great deal of noise in Europe, do a great deal of harm to our cause. [He proceeds to discuss the new treaty and alliance between France and Austria.] For my own part, if our Court would spend money enough to keep the North in order, I should be very glad to be rid of the House of Austria now and for ever more, for I sincerely think, if he will act fairly by us, we may make a great deal more of the King of Prussia.

We have very little today about Minorca; the Court of France has news from Mahon by express of the 10<sup>th</sup> instant that the trenches were opened before St Philip's the night before.... A letter from Gibraltar of the 2<sup>nd</sup> instant says that Mr Byng was just arrived, that he had found the *Deptford* and *Princess Louisa*, that the remainder of Edgcombe's ships were hourly expected and that Mr Byng was to sail very soon. I hear too from Brest that Admiral Boscawen's fleet had taken the *Aquilon*, a 50 gun ship....

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 97.]

HAGUE, June 4, 1756.

...You will see by the enclosed that Byng and La Galissonnière have had a brush; it is clear to me that the French were too strong for him and he seems to have conducted himself perfectly well; for he kept the advantage of the wind and retired when he saw proper, without risking anything with too great a disadvantage<sup>1</sup>. The French had four 74 gun ships, and from all I have ever heard from our seamen, they are fit to fight our 90<sup>s</sup> as long as their masts can stand, and consequently superior by many hundred tons to all our 70 gun ships of which Mr Byng had four and one 74, which is a new one. What I lament is the fate of Minorca and the brave garrison of Fort St Philip's which, I fear, will be disheartened, not knowing the reasons; but still I think, had Mr Byng been beat, the Italian powers would have done more than waver, which is of as much consequence as Minorca. To say the truth, I don't know why the French account is so modest and that

<sup>1</sup> He changed his opinion considerably when all the facts became public; below, p. 303.

makes me want another from our people; for there are circumstances in this relation which I don't comprehend. I think in England there will be a great outcry upon this affair, and people will complain that a greater force was not sent there which, I confess, I don't comprehend neither; for the account we had here in April, and which was published in all your newspapers, agrees exactly with the account of the French in Mons. la Galissonnière's own letter, and consequently you must have known their force if you had had a mind....

[On June 11, 1756 (N. 180, f. 257), the Duke of Newcastle writes a long letter to Colonel Joseph Yorke at the Hague on the situation caused by the new alliance between France and Austria, and the necessity of confronting it by one with Prussia and Russia, and asking for his opinion. In answer, on June 18th (f. 339), Colonel Yorke agrees on these two fundamental points of policy and advises that "whatever money is thought proper to be given at this juncture would perhaps be better bestowed upon the ministers in presents than upon their masters in subsidies," especially in Russia and in Sweden; that the war should be as much as possible a naval one, and that as little English money as could be should be sent abroad. As to Holland, not much was to be expected from thence; but if some consideration were shown for Dutch trade in the war, the inclination towards Prussia might be maintained.]

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 188.]

CLAREMONT, June 12, 1756.

[Discusses the dangers arising from the recent treaty between France and Austria. It was a terrible consideration that these difficulties came upon them when a breach in the Royal Family was threatened....Lord Waldegrave had had several conversations with the Princess of Wales and the Prince and told them that they were] on the brink of a precipice, that the Prince was in a wrong way, that the King had the power, that the nation was with the King in this point, etc. The Princess of Wales made all the professions of duty and gratitude to the King,...that the Prince of Wales...only requested to have my Lord Bute, that the King was mistaken in my Lord Bute's character or pretensions....The Princess said to my Lord Waldegrave that she had expected more from the Duke of Newcastle, after what she had said to Mr Stone, that she should make one more trial, or to that purpose, by Mr Stone, and if she found that made no impression "she should then trouble the Duke of Newcastle no more<sup>1</sup>."...When my Lord Waldegrave

<sup>1</sup> "During these transactions the Prince and Princess of Wales, forgetting their former resentment, sent messages to the Duke of Newcastle in the most submissive terms, assuring him that if by his interest in the Closet Lord Bute could be made Groom of the Stole they should ever remember it as the greatest obligation; that it was the only point they had really at heart and that they were desirous of obtaining so considerable a favour



talked of the King's power and the Constitution, the Prince of Wales answered, "That is the Chancellor." My Lord Waldegrave made a full report of the whole to the King last Wednesday<sup>1</sup>. His Majesty talked it over fully with me afterwards with all the marks of goodness, attention and regard for your Lordship and myself imaginable, for we went hand in hand throughout his whole consideration....I never saw the King more agitated than he was yesterday....His Majesty admitted to me that, whatever was done, would fall only upon your Lordship and your humble servant....

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 101.]

HAGUE, June 15th, 1756.

...I am free enough to say, notwithstanding all the lists, that I am convinced, from the force of La Galissonnière's 74 gun ships, that he was much an overmatch for Byng; whether he ought to have risked everything, let the consequence have been ever so bad for his fleet, I won't decide, because that must have depended a good deal upon his orders and those I have not seen. As to our notion about the superiority of the manning our fleet, I am not quite sanguine enough to believe it; for I know what kind of stories are always told about the Enemy, and how little grounds there generally is for them. I am confident we have had bad intelligence, and as confident that, if Mr Byng had had another 90 gun ship, he would have beat the French fleet out of the sea. At present I am chiefly uneasy about St Philip's Castle where, by all accounts, the Governor makes a stout defence....Without all dispute you must keep your superiority in the Mediterranean....It would be hard indeed, if the French should be masters of the sea with only 12 men of war of the line riding in it, which is the case at present....You must not too easily let yourselves be alarmed, for that will be destruction to you. If I was the first minister, I would support the navy with all my might and defy all continent schemes, to which I would lend an ear no more than by negotiations and distant promises upon seeing effects, and giving money to ministers rather than masters. If you will only keep your superiority at sea, which you must do if you will be a power, you need not be afraid of any system Austria and Versailles can form....

*Lord Walpole<sup>2</sup> to the Lord Chancellor*

[Coxe's *Lord Walpole*, ii. 430.]

COCKPIT, June 20, 1756.

MY LORD,...

If no opportunity can offer after this day to take my leave of your Lordship in person, I hope you will accept, in this by his means because they had rather be obliged to him than to any other minister." Lord Waldegrave's *Memoirs*, 65.

<sup>1</sup> Lord Waldegrave gives no account of these conversations in his memoirs.

<sup>2</sup> The elder Horace Walpole was created by the Chancellor's means Lord Walpole of

manner, of my sincere acknowledgments for the many favours you have from time to time conferred upon me, with my most ardent prayers for your health and prosperity in the long enjoyment of your high station. It is absolutely necessary for the public weal, in these doubtful and perilous times, such as I never before remember to have happened to this exhausted, divided and distracted nation. I beg leave to add that wherever I shall be, until I cease to be, I shall retain a remembrance of your Lordship's goodness to me, and remain with the most affectionate regard...

[WALPOLE.]

*Lord Chancellor to Lord Walpole*

[Coxe's *Lord Walpole*, ii. 431.]

POWIS HOUSE, *June 20, 1756.*

MY DEAR LORD,

I return your Lordship a thousand thanks for your very kind letter, and am very sorry that my being detained in the Chair of the British Museum, till past twelve o'clock last night, hindered my waiting upon you, as I hoped to have done. I am particularly engaged this morning, and on Sunday evenings am expected to be found at home: so that I fear I shall scarce be able to have that honour before you go out of town.

Permit me, therefore, to take this way of repeating my most cordial congratulations on your promotion to the peerage, from which I do most heartily wish and augur everything prosperous to your Lordship and your family. I am infinitely obliged to you for your kind wishes. I lament the situation of the public as much as any person in the world, and lament also how little use I can be of to it. One thing we may all do some good by, I mean by endeavouring to correct the madness of the people for war, and instilling gradually a disposition for peace...

Once more let me wish your Lordship all happiness and a very good journey; and assure you that you do not leave behind you any one who is with greater truth and affection, my dear Lord,

[than your, etc.

HARDWICKE.]

Wolterton on June 1, 1756. He died soon afterwards on February 5, 1757 in his 79th year. See the second Lord Hardwicke's praise of his diplomatic abilities, of which many instances are to be found in this correspondence, Hardwicke *State Papers*, ii. 631. In a note appended to one of his letters he writes: "This old gentleman was one of the best and most affectionate friends that our family ever had." H. 258, f. 87.

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 198.]

NEWCASTLE HOUSE, June 25, 1756.

MY DEAREST LORD,

Every day convinces me that it is impossible for me almost to oblige everybody or to avoid being suspected of falsity and duplicity, even to those for whom I have, and have always professed, the greatest friendship.

This is at present the case with Mr Attorney-General<sup>1</sup>, who, I own, I thought was the last man in all England capable of suspecting me. He came to me this morning under the greatest anxiety, "That I had talked mysteriously to him, *that he would not suspect me*, what could be the meaning of this delay. I had told him my Lord Chancellor left it to me; my Lord Chancellor had engaged the judges to put off their circuits *four days*, had told all the profession that he knew no more of this affair than the day the Chief Justice died on." I answered very truly that I was surprised to find myself so very unjustly suspected, that I had told him from the beginning that his leaving the House of Commons was a most unfortunate thing for me; but that if he insisted upon it, as he does, I would do my utmost to promote the success of his views, as I will do; that it was true that I believed your Lordship was not at all for the delay, that my reason was that, when a thing attended with such very unfortunate circumstances to me, was to be done, I was, I owned, willing to do it, as late as possible; that what I proposed principally by the delay was to see whether in the meantime some system might not be found out for the House of Commons; that also in this time of distress, which so much affected the King, I was unwilling His Majesty should be agitated with any business that could be avoided, and that this would certainly agitate him. All these reasonings signified nothing. He would not suppose, "there could be any difficulty with the King," and I found he must either be gratified or *I and I alone* must be suspected; and as I cannot bear these reproaches, I determined to write the other letter to your Lordship<sup>2</sup>, and must beg that you would, for these reasons, comply with what is desired in it. Sure your good nature must pity me; never was poor man so used by his *best friends*; but I must bear all, and all I can bear but *being suspected*, and that I can't bear, whatever may be the consequences. I pour out my heart to you and am always, my dearest Lord,

most *unalterably* yours,

HOLLES NEWCASTLE.

<sup>1</sup> p. 275.<sup>2</sup> f. 200, asking the Chancellor to manage Murray's promotion to the chief justiceship and peerage with the King.

*Lord Chancellor to the Duke of Newcastle*

[N. 180, f. 440.]

POWIS HOUSE, *June 26th*, 1756. Saturday night.

MY DEAR LORD,

Yesterday I received the honour of your Grace's two letters under the same cover, and was much concerned to find you under so much anxiety....I know very well how to pity your Grace under such circumstances. They are always very uneasy and vexatious, especially when coming from such hands; but we so frequently meet with incidents of that nature in these times that, if one does not grow, to a certain degree, callous against the impression of them, there will be no possibility of going on. I immediately obeyed your Grace's commands by sending to Mr Attorney General, who came to me at night, after my return from Lincoln's Inn Hall....Mr Murray appeared easy and in good humour, and did not talk in the style of suspicion. He applied himself to answer the reasons for delay in the same manner as he had done to your Grace, and expressed a strong desire to have the affair finished this term. He owned he had before expressed more indifference on that head, but had formed this opinion on reflection. I told him that, as this was now his desire, I would take the first opportunity of laying it before the King in the best manner I could....Monday was the first day and then I would certainly go, with which he was perfectly well satisfied. I let him know that it was possible His Majesty might continue to make some difficulty, or demur at least about the peerage, to which he only answered that *he had always considered the peerage and Chief Justice as going together*. I told him that I would certainly lay them both before the King together in the most favourable light. This day I received a very civil letter from him<sup>1</sup>, but writ professedly with this view, to explain his meaning further as to the words first underlined [in italics], viz: that he meant to convey, *that without the peerage he wished to decline all pretensions to the Chief Justiceship*. I intend to wait upon His Majesty on Monday and do the best I can, and will that afternoon acquaint your Grace with what shall have passed on that occasion....

I am most faithfully and unfeignedly

my dear Lord, ever yours,

HARDWICKE.

<sup>1</sup> H. 246, f. 85.

*Duke of Newcastle to the Lord Chancellor*

[N. 180, f. 446; H. 67, f. 204.]

CLAREMONT, *June 27, 1756.*

MY DEAREST LORD,

If anything could give me comfort in our present most distressed situation, it would be the kind letter which I received from your Lordship this morning, and particularly the conclusion of it. Assurances of the continuance of your friendship are as unnecessary as they are agreeable and comforting to me at all times. I have had too long experience to doubt either of the importance or extent of your friendship to me. There is only one further mark of it, which you have yet left untried, and that is to endeavour to make the King easy in my retiring from a situation, where I can have neither ease, quiet, satisfaction nor success...

*Lord Chancellor to the Duke of Newcastle*  
*in answer to a letter of the same date from the latter* (H. 67, f. 206)

[N. 180, f. 449.]

POWIS HOUSE, *June 28, 1756, 8 at night.*

MY DEAR LORD,...

As to the business of my audience, the result was this. I stated Mr Attorney General's application in as dutiful and favourable a light as I possibly could. I acquainted his Majesty with the reasons which, upon reflection and consideration, had induced him to be clearly of opinion, that no expedient or equivalent could possibly be found out that could make his continuance in the House of Commons to be of utility to his Majesty's service, and that the world was already prepared to look upon it (whatever it should be) only in the light of an honourable pension. I told him also the reasons that had convinced Mr Murray that there could be no utility to his service in any longer delay, as the destination was so generally known; and I did not scruple to say that upon this point I was inclined to the same way of thinking, and I concluded with the point of the peerage which, I assure your Grace, I put as strongly as I could, and conveyed to his Majesty, in a modest manner, that Mr Murray had always connected the one with the other, and without the one would decline the other. The King heard me without interruption and then with great good humour asked me, "What is your opinion?" I gave my opinion in support of every part of Mr Murray's request with my reasons; and I told his Majesty that...you had authorized me humbly to lay before his Majesty your opinion to the same purpose, which I repeated. The King then said, "As this is the opinion of you both,

I am ready to make Mr Murray Chief Justice this term without any further delay, and I desire you will tell him so and the regard which I have for him and his services. But the office of Chief Justice is not only one of the most important but, taken in all its circumstances, one of the most valuable I have to give. It is £6000 a year for life, and I will not make a precedent that when I advance a man from the bar to that office, he should think that he has an immediate claim to a peerage. I had a very good opinion of Ryder (who had served me very long and very well) and loved him; but you know that I refused to make him a peer till above two years after he was Chief Justice. *That* should come afterwards, after there has been experience of a man in that office, and *it may come* afterwards in this case.”—I tell your Grace pretty near the words; I am very sure the precise sense. I did not fail to urge the difference of the two cases; that Mr Murray was himself of an ancient noble family, had made a great figure in Parliament and would naturally wish to continue there, though in another House, and not to be thrown out of all business of the state at his time of life. However, the King adhered firmly (though without any ill-humour) to his opinion upon this point, and added one further reason, viz: the many importunities which he at present laboured under for peerage, and the clamour and uneasiness he should bring upon himself, and ordered me to acquaint Mr Attorney with both his reasons.

I have accordingly obeyed his commands and have told Mr Attorney the whole, but more at large than I could do in a letter. He received it in a very handsome manner, and appeared less affected than I expected....I desired to know of him what he wished I should say or do further. After some talk between us, he rested in this—that as the King seemed at first inclined to delay it till the beginning of Michaelmas Term, and your Grace had all along wished it, though he did not see the utility of it, he thought there was no other party to take but to resort to, and acquiesce in, *that*. I told him I would do as he would have me, but I must necessarily in two or three days carry the circuit paper to his Majesty to sign. This he agreed [to] and desired I would then talk in the manner before described. I told him, I would then repeat his request of the peerage; but say that, as his Majesty had once inclined to delay the making a Chief Justice till Michaelmas Term, he (Mr Attorney) acquiesced in the King’s pleasure in that respect, humbly hoping that in the meantime, his Majesty would be

graciously pleased to determine his own mind to confer the great favour of peerage together with the office. He said he was much obliged to me for stating it in that way, and it was all he could at present desire....

ever yours

HARDWICKE<sup>1</sup>.

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 105.]

HAGUE, July 2, 1756.

...Whatever Admiral Byng may think, he will be single in his opinion about his victory; for the moment he had no communication with the Castle and left the sea to the Enemy, I had rather be beat like Mons<sup>r</sup> de la Galissonnière. Nobody stood by him longer than I did, and perhaps I might have still had some small remains of charity in relation to the action, tho' I know it is treason; but the questions and answers of the council of war are so much the reverse of common-sense that I must give up their heads entirely, and think it lucky no worse happened<sup>2</sup>....By the letters of the 15th June from Mahon, the French had made no progress of consequence before St Philip's...; they lose a vast number of men both by sickness and the fire of the Castle, and at Marseilles and elsewhere they begin to think the wisest thing would be to draw off their troops, before the English fleet returns with a reinforcement sufficient to be masters at sea. They are in prodigious want of cannon at Toulon for land and sea service, tho' they have stripped all their towns; and, notwithstanding these efforts, they will not be able to get out above 3 ships, if so many, to join La Galissonnière who has wrote for 800 fresh seamen, but where to have them, even by force? In the meanwhile they press everything, even artizans out of their shops. God grant we may still do something!...

*Col. the Hon. Joseph Yorke to Lady Anson*

[H. 40, f. 180.]

HAGUE, July 6, 1756.

...The more one thinks about it, the more vexed and angry one grows. I dare not, after the council of war you sent me on the 29th past and your account of M<sup>r</sup> Fowke's intentions to do everything but succour St Philip's, I dare not, I say, flatter myself, that these genius's united again in council, should undertake anything, though with ever such a superiority....The castle gives him [Byng] all the chance in the world. I have had accounts as late as the 18th June, till when the besiegers had made no progress. So far from it, their batteries were no sooner made than dismounted. On the last day they pretended they had some better hopes of success, though that was only founded upon a new battery, that was to be

<sup>1</sup> See further, H. 67, f. 211.

<sup>2</sup> p. 271 n.

opened the next day. In the meanwhile they lose a great number of men. The battalion of artillery, M. de Richelieu carried with him, was all destroyed or the greatest part of it, so that he had been obliged to recruit them with four companies of the Regt de Soissonnois. The officers write to their friends that they shall never take the place, that all their efforts are in vain, and that the army will all perish before it.... The Marshal writes to Mad<sup>e</sup> de Brignolé, his friend at Genoa, that he confesses neither he nor any of his engineers had any notion of the place, that it is one of the strongest in Europe; that he hopes, however, when he has got everything he wants from France, that he shall be able to reduce it, since Mon<sup>r</sup> de la Galissonnière has been able to keep his station, which has enabled him to receive his stores and provisions from Provence etc. Besides this, the troops are grown very sickly which, joined to the discontent and the dearness of provisions, completes the agreeableness of their situation, to which our fleet must put the finishing stroke, or they all deserve to be hanged; for never place gave them, who come to relieve it, a better chance....

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 213.]      POWIS HOUSE, Thursday, 7 m. past three [July 8, 1756].

MY DEAR LORD,

You will be surprised at my being at Powis House at this time of day, and more with my business. I never was better received in my life [by the King].... "My Lord, I am not against giving him [Lord Bute] a pension, if he would renounce Pitt, opposition etc.; but who shall I employ? Fox shall have nothing to do with it."—"Your Majesty is very much in the right."—"Nor the Duke of Argyll," says the King. "Can't you find out some Scotchman? What think you of the Attorney General?"—"Extremely well, Sir, if he would undertake it."—"Try."—"I will, Sir."—"If he will not, what think you of my Lord Moreton; ask Murray what he thinks of Moreton, if he won't do it himself. Moreton is a very honest man."—"So he is, Sir."<sup>1</sup>...His Majesty afterwards talked very freely of Fox.—"He is black; I know him, tho' I don't show it. I wish the Duke of Devonshire could be got from him; the Duke of Grafton is the man to do it."—"So he is, Sir."—I told his Majesty some little circumstances about Mr Fox as to little employments in the Treasury and House of Commons. "My Lord, I don't like this; get people to be attached to yourself."—"It is your Majesty must do that."—These are not quite immaterial circumstances. I wished to have seen your Lordship before I saw the Attorney General, or before dinner, to have known your thoughts, but time presses\*....

<sup>1</sup> Subsequently the Duke of Argyll was commissioned through Murray to induce Lord Bute to accept some other office or reward than "employment about the Prince of Wales." ff. 215, 217.

\* I do not think the D. of N. acted wisely in roiling Fox, when he was not sure of



*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 108.]

HAGUE, July 9, 1756.

...The honest Blakeney holds out still and seems to continue to foil all the attempts of the besiegers<sup>1</sup>....No sooner have the enemy made a new battery than they unmask a new one to silence it. God grant them success, and indeed the French accounts are so dry they give one great encouragement. All Europe interests itself for Blakeney and even our enemies wish him good luck, so much has he gained upon their minds, a noble example which will, I hope, be followed by us all....

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 219.]

CLAREMONT, July 12, 1756.

MY DEAREST LORD,

...The Duke of Marlborough desired to come to me on Friday morning...to exhort me, for my own sake, to get my Lord Bute put about the Prince of Wales and to bring them both to Kensington; that if that was not done, there would be the most violent and determined opposition and that levelled singly against *me*, and that I should consider in what condition I should be, especially if, as it might happen, *we quarrelled amongst ourselves*....

I went to the *Lady* [Yarmouth], who was extremely explicit that nothing could be said of a certain person [Fox] that *she* did not know and *more*, that *that* was a very bad choice, that she wished we had had Mr Pitt, and I said she knew that that was not our fault; that as to the other "il minera tousjours."

[Fox had been imprudent enough, without the knowledge of the other ministers or their approval, to propose the exchange of Gibraltar for Minorca; he had endeavoured to get the support of Viry, the Sardinian minister, and had even, as it appeared, discussed it with Abreu, the Spanish ambassador in London.]

I am afraid you think I love to write long letters. Indeed I don't, but I love to have your Lordship informed (*and in writing*) of every material circumstance that concerns the public *and myself*. Then you have time to reflect upon them, and I can have (what I so much want and esteem) your Lordship's opinion upon them, when I see you, which I hope you will give me leave to do tomorrow evening....

I am ever most unalterably yours,

HOLLES NEWCASTLE.

Pitt, and it gave Fox some ground to say to my Father, speaking of the King, that he was sure he was not pleased with *what is*. H. [See p. 330.]

<sup>1</sup> The garrison had in fact capitulated on June 28.

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 109.]

HAGUE, July 16, 1756.

DEAR BROTHER,

Since the affair of Minorca I have not had the courage to write to anybody....I am convinced from the French account I have seen that the Governor<sup>1</sup> would have foiled all their attempts, if he had [had] garrison enough or, perhaps, any hopes of relief; but as five weeks were gone over since the action without hearing any news of the Fleet, and his garrison weakened and uneasy and no hopes of obtaining tolerable conditions for people that had seconded him so well, if he staid till the last extremity, the poor old man was forced unwillingly to get the best terms he could. I have been told too that he had been forced to take the powder from some of the mines to employ at his batteries, and that he was in want of spare carriages for his cannon....

*Duke of Newcastle to the Lord Chancellor*

[H. 67, f. 231; N. 181, f. 210.]

CLAREMONT, July 19, 1756.

[He proposes a meeting of the Lords of the Cabinet to concert measures to retrieve the loss of Minorca which, he believes, was of equal value to any other possession except Ireland. The injury to the national reputation and also to the credit of the administration was very great, and he was himself personally to be loaded with all the blame and resentment, a gross injustice. He had no greater share in what was done than any other member of the council. He cannot remember that any person suggested sending a ship to the Mediterranean before the order to Byng; more ships they could not send without exposing England itself.] The short state of the case I take to be this; we sent our ships as soon as they could be spared from hence with safety. The fact shews they arrived in time and were sufficient in number; and if Byng had done his duty, it is as certain, as anything of that kind can be, that the French fleet would have been beat and the siege of Port Mahon raised....To this therefore we must bring it, and those who will not assist us in it are not our friends. I dread to think of the Attorney General being out of the House of Commons (as he must be), when this question comes on. I hope your Lordship will talk seriously to my Lord Anson to prepare materials for defence and also (which is still of more consequence) for the immediate trial and condemnation of Admiral Byng if, as I think there can be no doubt, he deserves it. The sea officers should be learnt to talk in this manner and not to think to fling the blame upon civil ministers. Your Lordship knows the little share *we* have in military operations or in the choice of military men, either

<sup>1</sup> General William, afterwards Lord, Blakeney, see vol. i. 495 n.

at sea or land. And it would be very unjust for us to suffer, where we have scarce been consulted; I mean this only as to operations at land. Could any object of attack, either in the Mediterranean, the West Indies or North America be agreed upon, that would keep up people's spirits and divert their resentment? Without it we must expect everything that is bad. I know your Lordship feels for me as much as I can do for myself. You know also how unjustly I am attacked upon this occasion....

*Archbishop of Canterbury to the Lord Chancellor*

[H. 251, f. 325.]

CROYDON HOUSE, July 27, 1756.

...I am much concerned to hear of the disagreeable intercourse between the two great houses. Such a parent, as the King, ought to be obeyed in such matters without reserve tho', at the P[rin]ce's age, it may be proper to manage his temper and support his credit. As to his coming to St James's, the King will be the best judge; but if he does not bring his heart along with him, he may become a troublesome inmate and people round him may have more opportunities of domestic mischief, which would soon lay hold of the public. I do marvel most extremely at the conduct of a great Lady and the zeal that is shown to advance a very insignificant nobleman in a way, of all others the most improper, for his advancement. I was in hopes these messages etc. had been preserved in secrecy, but I heard of them yesterday from Kew, as become the tittle tattle of the press, in every disagreeable circumstance. I was struck dumb the other day when I was told that, in an heated conversation between two great ladies<sup>1</sup>, one should tell the other that her son was an imbecile and that she would find herself accountable for all his *sottises*. I know the man that told me is not of the first character for his veracity, but he is an appendant to a great family....

*Rev. Henry Etough to Lord Walpole*

[H. 246, f. 180. Copy from the *Walpole Papers*.]

Aug. 28, 1756.

...I spent yesterday in the City, where insanity is predominant. Their outrage at present is confined to the Chancellor. The D. of N. is said to be obsequious to his absolute direction. His and Lord Royston's acquired estates, the places of which the whole family is possessed, are represented as equal to the total of the D. of Marlborough's grandfather's income when at the highest. The value of the places are well known. That of Kent [*i.e.* Wrest] is more than £8000 a year [but on account of the many jointures upon it was for some time of little value]. The whole of the Cambridgeshire and Hardwicke estate is below £6000 a year;

<sup>1</sup> The Princess of Wales and Princess Amelia are probably meant.

two or three considerable parts of the former are church leases. I will not add numerous revilings and misrepresentations of this amiable great man....

H. ETOUGH.

*James Hoskyns to the Earl of Hardwicke*

[H. 246, f. 369.]

INNER TEMPLE HALL STAIRCASE NO. 2. [1756.]

May it please your Lordship,

I think it is my duty to acquaint your Lordship that there will be a strong endeavour used by the malecontents to impeach your Lordship this next session of Parliament. They are the same party that spirited up and upheld the Richmond Park indictment<sup>1</sup> and that attacked the late Lord Chief Justice [Ryder] by pamphlets, etc: but they are much increased both in power and policy since that time. This intelligence I have from a gentleman in great trust with them, and that furthermore they give out that the Crisis of Time is now come *that his Majesty shall be greater or must be less*. I apprehend the end of the addresses from the several counties is to this intent (the members thereof receiving as it were their own instructions) that His Majesty being obliged to give up the guardians of his realm may be less able to withstand their Oliverian or Republican attempts. This gentleman (whose information I have found to be true...) tells me that the party will seem calm and unruffled, for the first two or three days of the session, and that in expectation of a proper handle in the King's Speech they are to try their strength in the Address to His Majesty, wherein they will, as it were, insist on his giving up to justice, as they call it, whomsoever they impeach. I humbly hope your Lordship will please to pardon this hasty scroll, which method I have taken (despairing of a personal opportunity), to discharge what is my certain duty; for I believe in my conscience it is worse than I have mentioned. Wishing Heaven may protect your Lordship I remain, my Lord, your Lordship's

most humble servant

JAS. HOSKYNs, A.B.R.

[H. 246, f. 154.]

n. d. [1756.]

*To Phillip Lord Hardwicke at his Seat at Wimble or Elsewhere with Care and Speed.*

I am at a loss how to stile you and this is my Reason you play the Devil's part bet<sup>r</sup> than ever Oliver Did ad you been living then, you Wod a [*i.e.* have] us[urped] the Crown as he did was it not

<sup>1</sup> Sir John Philipps and the younger Beckford brought in 1754 an unsuccessful action against Princess Amelia, as Ranger, for closing Richmond Park to the public. A further suit, however, subsequently, was decided against the Princess. Walpole, *George II*, i. 401, ii. 220.

for one thing the vain Oppin<sup>on</sup> of y<sup>r</sup> Self, is great, you fear that you might Miscarry in one point then that wod over Set the Whole O Villian Tyrant Scoundrel to call the a man or any one belongg to y<sup>r</sup> Damnation Soc<sup>ity</sup> I wrong you all.

Pray good M<sup>r</sup> Wickedness how many Widdows and Orphan<sup>s</sup> have you Ruin to make Wim<sup>ple</sup> in the man[ner] it is in.

Pray how many fellow Subjects as been murder<sup>d</sup> upon your and the Rest of y<sup>r</sup> Damnaition Clan<sup>s</sup> Acc<sup>t</sup>, purely that you might get money.

Pray how many Scalp<sup>s</sup> have you and y<sup>rs</sup> got great Quantys of money by ; this money shall be again<sup>st</sup> you at one day.

Do you ever Rembr<sup>e</sup> you End and the Rest of the Villian's belongg to you good God deliver us from the hands of shuch a Set of Villians, if they Rembr<sup>e</sup> their End they wod nev<sup>r</sup> do amiss....

Pray how much more does the family enjoy then the Bare set down Salery's which I think is only Ninety five thousand a year, there's a very Widefield to plow in above Ninety five thousand and more O Dam you and those who Incourages shuch Villian<sup>s</sup> to Reign upon the face of the Hearth.

Dont you try all arts to get Arbitry Power new acts to add to your Vile ways New Laws to Encourage none but such Villian<sup>s</sup> as y<sup>r</sup> self what shall be y<sup>r</sup> Judgement you shall go to the Place appoint<sup>d</sup> for the Devill and His A....

Pray how much money did you sell Port Mahon for. I wish y<sup>r</sup> Wicked Laws wod give me leave to speak to you face to face then I shod see villian<sup>y</sup> in all its wicked aray....

The Wicked shall Reign for a While Low I went by and Wimple was no more Powis and Wimple shall be no more in Rembr<sup>ance</sup> for my Wickedness to this just Naition says the Wicked Lord of Ormond Street....

[On Aug. 28, 1756 (H. 67, f. 256; N. 182, f. 111), the Duke of Newcastle writes a long letter to the Chancellor from Claremont on the difficult position of affairs, the opposition to the government kept up by the Princess of Wales, and his own desire to retire. ...He proposed various new supporters for the House of Commons including Charles Pratt who, if brought forward and given a seat, could not occasion jealousy to Henley now obtaining the great promotion to Attorney-General.] I by no means say the same with regard to another person<sup>1</sup>, and it is upon that account only that I would beg to have your Lordship's opinion.

<sup>1</sup> Charles Yorke. This was the beginning of the rivalry between the two which had later such fatal consequences, of which much hereafter.

[Another letter follows to the Chancellor on the same day written at night.]

[N. 182, f. 123; H. 67, f. 269.]

MY DEAR LORD,

You must excuse the length of my other letter; you have left me alone and, without a compliment, I have nobody to apply to but yourself. I see dangers on all sides and no means of getting out of them. I wish you would seriously think of my getting out. If things should succeed beyond our expectation and the King should consent to anything we propose, as I rather think in the present circumstances he would do, what a figure shall we make with Mr Pitt coming in in conquest over us? though there is nothing I would not yield to for the sake of the King and the public. The army is absolutely under other direction; the sea does not love to be controlled, or even advised; and yet I am to answer for any miscarriage in either....My dear Lord, pity me, alone as I am in my present distress; give me the comfort you only can, viz: a clear and determined opinion, and then I am easy....

ever yours

...

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 182, f. 143.]

WIMPOLE, Aug. 29, 1756.

[He does not approve of, but will acquiesce in, the appointment of Lord Bute to be Groom of the Stole, and continues to urge the taking in of Pitt.] One thing I am persuaded of, that, if his ambition was gratified in the point on which he has set his heart, *that* [*i.e.* acting with the Duke of Newcastle] would not stand in the way; and measures are always capable of being distinguished by some new turn to be given to them. A small turn did the last time with the same gentleman. [Lord Chesterfield was right in saying that the Duke, Lord Anson and himself were the persons chiefly attacked.] Mr Fox is distinguished from others, partly because he takes pains to distinguish himself. Whatever courage Mr Beckford may ascribe to him, our master has quite changed his style on that head; and indeed, I think his late behaviour has betrayed an interested fear. If, as your Grace has heard, he has often declared *that we might have sent sooner and more*, he must be made to be very specific in explaining the part he will take in Parliament before that meets....As to the trying all methods for making peace, I am quite of my Lord Chesterfield's mind, and have long been so. I think this war of the most ruinous kind, both in the carrying on and in its consequences. I had from the first an

aversion to it and have seen no reason to change.... We see and feel our own difficulties most, but our enemies have their difficulties and great ones too. Their trade languishes much more than ours, and I have been told that they now borrow money at six p. cent. [The North American project still appeared to him in a favourable light. He did not believe in the Jacobite element in the recent riots. The infamous and provocative libels against the government should be punished, and short papers should be written and inserted in the daily papers in its defence.] As to retiring, my Lord Chesterfield said *if he was in your place he would absolutely do it*, and I believe him. [No doubt retirement was the wisest measure for them both; but at that moment it was impracticable and would expose them to the reproach of deserting the King and running away from danger.]

As to Mr Pratt, your Grace knows my whole way of thinking upon that matter. I cannot change it, nor can I add anything to it. I love the man and have been very much his friend; and if he was my own son I should advise the same thing, both out of regard for him and your Grace. The difference of time can be of no ill consequence to him, nor can your Grace expect any immediate use of so new a member....

*Duke of Newcastle to the Lord Chancellor*

[N. 182, f. 175; H. 68, f. 13.]

NEWCASTLE HOUSE, *Sep.* 2, 1756.

MY DEAR LORD,...

I could have wished in this time of difficulty, danger and almost universal uneasiness and discontent throughout the whole kingdom (of which I receive fresh accounts from all quarters and from undoubted hands), that your Lordship could have suggested some adequate expedient for stemming the torrent and effect of this ill-humour in the House of Commons. [The King, however, had told him that he was persuaded that things were not so bad as they were made out to be, and had agreed to the Chancellor being summoned to town to decide on some measure. The Duke had had a full discourse with Lady Yarmouth whose opinion it was that the King should, and would, take in Mr Pitt now, if the Duke and the Chancellor advised it, when there would be no reason to yield on the subject of Lord Bute.... In an interview with Fox the latter had declared the taking in of Pitt to be quite impracticable. He would come to no decision without the Chancellor, who must come up on Tuesday and stay till Saturday<sup>1</sup>.]

<sup>1</sup> Further, H. 68, f. 21.

*Lord Chancellor's "Draft of part of a Letter to Col. Yorke"*

[H. 9, f. 50.]

WIMPOLE, Sept. 17th, 1756.

DEAR JOE,

You will accuse me, not without reason, of being as bad a correspondent in the Country as in Town; whether in business or retirement, still excuses for not writing. I got down to this place on the 21st of August, the day after the date of your last letter, but had a call to Town since for the best part of the last week, to which your dispatches in some measure gave occasion....I sincerely pity you for being engaged in so intricate and delicate a negotiation; intricate with regard to the evil and the remedy, and delicate with regard to both Powers<sup>1</sup>....

I agree with you in your state of the trade of Holland as it regards France.

1. The contraband trade.
2. The cabotage or coastwise trade.
3. The trade in naval stores.
4. The carrying on their [*i.e.* the French] American commerce and supplying their colonies with provisions.
5. The great carrying trade for France.

If there is any disposition in the States to agree, I should think the first three articles might be regulated without great difficulty; viz. the description of contraband might be reasonably enlarged, the cabotage prohibited and the supplying France with naval stores restrained, the prodigious mischief and extent of which appeared by the last ships stopt in the Downs. This is assisting France more effectually than if they were allies to them in the war.

As to the 4th article, it can never be suffered in any direct manner. All nations shut out foreigners from trading to their American colonies and so things stood at the time of making the Treaty of 1674. 'Tis the great rule still and cannot possibly now be raised except as a new invention evasively, to screen French effects from capture. The question is whether we shall suffer them to trade thither [*i.e.* to the French colonies] in time of war without seizure, when the French themselves will not suffer them to trade thither in time of peace, but seize them for it?

<sup>1</sup> The great advantage to Holland of the contraband trade with France and the supplying France with naval stores was in reality the great obstacle to the collaboration of the two nations in measures against the common enemy. See H. 8, f. 368; and further, pp. 135-7.



The 5th is the grand article to which the Rule of *free ships free goods* is applied. This is of the greatest importance to Great Britain for reasons which I need not repeat and is I suppose of the greatest value to Holland. This great carrying trade I divide into four heads—

1. The outward bound trade from Holland to France.
2. The carrying merchandize in general in Dutch bottoms from neutral countries to France.
3. The carrying goods, which have been brought in French bottoms from the East or West Indies or other parts of the world and landed in Spain or Portugal etc., there transhipped and transported from there in Dutch bottoms to France, to avoid the English cruisers.
4. The carrying goods in Dutch bottoms from France to Holland itself or any other neutral countries.

1. As to the first head, you say that goods carried from Holland to France are usually Dutch property and rarely French. If that is in fact so, I incline to let all such Dutch ships go free without molestation, provided they have no contraband or naval stores on board, and to be subject to be visited and stop't only for one of those two causes.

2. I am not sufficiently master of the circumstances attending the course of trade under this head; but I should incline to be as easy as possible on the subject of it, provided the two restrictions about contraband and naval stores are observed; for I suppose it is a trade which the Dutch fairly carry on in time of peace.

3. The 3rd article is in its nature merely an evasive trade to prevent England's annoying France, and cannot possibly be admitted. It is in effect a continuation and completion of the original voyage and ought to be liable to the same captures, tho' the vessel is collusively changed and the goods transhipped. These ought to be subject to condemnation on proof that the goods are French property, notwithstanding any false bills of loading or documents whatsoever.

4. The fourth and last article seems to be the most difficult to form any modification upon. From the nature of thing[s], the points of contraband and naval stores do not enter into this consideration; and therefore I do not see that England can propose anything on this head but the general rule of the Law of Nations, that if the goods shall appear by proof to be the enemy's property, they shall be good prize, the ship being restored and the freight paid. If the

Dutch can propose any expedient which will establish a reasonable medium and not protect all the French trade I, for one, shall be for giving attention to it; but I apprehend that no regulations against false or fictitious documents etc. will be sufficient, because they will be easily evaded; and if the States should insist that any passports or documents should be established as evidence absolutely conclusive, upon sight whereof the ship should be suffered to proceed without being brought into port for further examination, that would legitimate all kinds of fraud by treaty.

You know now the whole of what has occurred to me on this important subject; but you must consider it only as coming from a private person, and in your manner of negotiating follow such instructions as you will receive from your proper superiors. I am very sensible of the defects of what I have offered; but if it should suggest any idea which you may find proper to hint or reecho back hither, you are at full liberty to make use of it as you shall think fit.

[added in the margin as further topics]

King of Prussia

State of affairs at home

Clamours, addresses etc.

Lord Royston etc.

*Duke of Newcastle to the Lord Chancellor*

[H. 68, f. 65.]

NEWCASTLE HOUSE, Oct. 5, 1756.

MY DEAR LORD,

I shall begin by sending your Lordship the agreeable news that the two messages were carried yesterday by my Lord Waldegrave<sup>1</sup>....My Lord W. communicated that to the Prince first and told him that the King had granted *both* his requests. H.R.H. was extremely pleased; "What, has the King granted both my requests? He has always been extremely good to me; if ever I have offended him, I am sorry for it; *it was not my own act, or my own doing*," and then was going on, which seemed to be that he was put upon it or influenced by others, but stopped and did not speak out<sup>2</sup>. The Princess seemed *embarrassed* but pleased, and my Lord Waldegrave brought this morning the enclosed letters to the

<sup>1</sup> On October 4, 1756 (H. 68, ff. 51-64), the King intimated to the Princess and Prince of Wales his consent to Lord Bute's becoming Groom of the Stole to the Prince and to the latter's remaining with the Princess.

<sup>2</sup> In a subsequent letter to the Chancellor (f. 80) the Duke of N. says "He was alone when my Lord W. first communicated to him the two messages...The Prince was then in a rapture of joy which has never appeared since. He went immediately to the Princess."

King<sup>1</sup>, which are as full of duty and gratitude as possible and with which His Majesty is very well pleased....My Lord W. told the Prince that he must not be surprized if he did not find the King at first much altered from what he had been of late, but that *that* would come, and that it depended upon him to be as well with the King as ever. This was a very proper hint which I hope will have its effect. The King is certainly pleased. I can't say the same of everybody. I went below stairs [to Lady Yarmouth]. I told them, by the Duke of Grafton's permission, that his Grace hoped the King would not spoil what he had done by a *cold reception*. She said *that was hard*, but, however, will certainly do her best.... My Lady Y. told me that the Princess (my old friend) [Princess Amelia] disapproved what we were doing. I am sure we have done right....Whether this is to be carried further with regard to any or all the opposition, I must expect to hear from your Lordship. As you seemed to think that we should wait to see how this worked, I suppose nothing is to be done at present....I had a very unpleasant conversation this morning with the Solicitor-General<sup>2</sup> [concerning his expectations].

I am, my dearest Lord,

ever yours,

HOLLES NEWCASTLE.

Have you done anything about Mr Pratt? We shall certainly lose him, and it is thought by those that know him that he would be a great loss, and we have not friends to spare. I wish you would come to some determination as to my bringing him into parliament....

*Lord Chancellor to the Duke of Newcastle*

[N. 183, f. 120.]

WIMPOLE, Oct. 7, 1756.

MY DEAR LORD,...

I begin, as your Grace does, with my most hearty congratulations on the present happy issue of the negotiation with Leicester House....I heartily wish the Prince had gone on with what he was about to say after the expression which dropped from him, *it was not my own act or my own doing*. The subsequent part might have been curious. It puts me in mind of his father's words upon the occasion of a former message viz: *The affair is now in other hands*<sup>3</sup>. Your Grace observes very truly that the

<sup>1</sup> ff. 72, 74.

<sup>2</sup> Sir Richard Lloyd, who was passed over for the attorney generalship as not being equal to the office, but who was to be otherwise compensated.

<sup>3</sup> The reply of Frederick Prince of Wales to the Chancellor and Lords in 1737. See vol. i. 167. The comparison is indeed very significant.

*letters to the King* are full of expressions of duty and gratitude to his Majesty, and I hope and pray that they may be verified in the amplest manner and followed with the happiest effects, as well public as domestic, which the best-intentioned can desire...but I cannot help observing that these assurances may be understood as being restrained *to the person of the King* and not go further.... Mr Pitt is undoubtedly the material man....As to Charles's being made Solicitor General, I think he might now have some claim to that promotion, if he was not my son. Mr Attorney General has told me that if he has it not, it can be only because he is my son, meaning merely that he cannot miss it, unless I give it up. I must therefore beg of your Grace out of that personal friendship for me, which I have so long and so often experienced, to facilitate this affair as much as possible. Your Grace is very ready at expedients and at turning the arrangement of preferments in various shapes to accommodate difficulties, and I entreat you to be so good as to employ some of that dexterity in accommodating this difficulty. If something can be proposed to Sir Richard Lloyd for his son which is creditable and not too remote, such a proposal will perform all that has been said to him; and if he will not own himself satisfied, we shall however stand justified. I am sure your Grace may absolutely depend on a most faithfully attached and zealous servant in Charles....

As to Mr Pratt I have always been his friend. I was his first friend in Westminster Hall and have served him, and I mean to continue so. I do not think there is any danger of losing him, especially as you have made up with Leicester House<sup>1</sup>. He is not so weak, nor would his brother Hardinge<sup>2</sup> let him be so. As to bringing him into Parliament, I am for it and my objection is only to the doing it *just at this time*. I have told your Grace my opinion upon it at large, for reasons which regard yourself, and I never was more convinced in my life that I am in the right. As they seem not to have the same weight with your Grace, I entirely submit them. If your Grace intends to do it now, I think the most natural way would be to make him second judge of Chester, which I am much for; and as he will then be in the King's service, it will appear to be a natural reason for bringing him into the House of Commons. I enquired for him when he was in town, but he was

<sup>1</sup> Pratt was a close adherent of Pitt, who was now, it will be remembered, connected with Leicester House.

<sup>2</sup> Nicholas Hardinge (1699-1758), Clerk to the House of Commons; he married in June Pratt's sister.

at a distance in the country....If your Grace would have me, I will write to him to sound him as to the place of second justice of Chester, or you may direct his brother Hardinge to do so....

*Duke of Newcastle to the Lord Chancellor*

[H. 68, f. 84.]

CLAREMONT, Oct. 10, 1756.

...I wish your Lordship would immediately write to Mr Pratt. Indeed he is worth securing and I desire he may be secured by you....I never doubted one moment but that Mr Charles Yorke would do extremely well and ably, and I am persuaded with all the duty and zeal for the King and, as your son, with the utmost friendship and affection to me. Mr Pratt can never interfere with him. I don't know their standing. Mr Yorke is far above him in business, is (for that must be taken for granted) the King's Solicitor General, and Mr Pratt must think himself happy to follow after him. Your Lordship sees I speak my thoughts with the utmost freedom; but notwithstanding these are my thoughts, if your Lordship wishes yourself that I should not bring Mr Pratt into parliament, I won't do it, and Pratt shall never know, nor his brother Hardinge, that I ever thought of it....

[N. 183, f. 203.]

[On October 11, 1756, the Chancellor writes further on the legal appointments in prospect.]

I am infinitely obliged to your Grace for the goodness which you express for Charles and am sure he will exert his utmost endeavours not to disappoint your expectations of him. As to Sir Richard Lloyd, my wish is the same as yours, that he may be let fall gently....

As to Mr Henley<sup>1</sup>, permit me to offer my humble advice to your Grace not to treat his subject with so much indifference. The office of Attorney-General is a very considerable one. In your situation, no man should be supposed to come into it but in connexion with you, and therefore I would recommend it to you to cultivate and put him under you. This cannot be done without appearing to put some confidence in him; and if there are demonstrations of your confidence going into a private channel, indeed, my dear Lord, it will do substantial harm.

As to Mr Pratt, Charles is much his friend; and I never talk to him on this subject except about the place of second judge of Chester, which Charles is zealous for his having. I think it will be

<sup>1</sup> Robert Henley, M.P. for Bath, K.C., now made Attorney-General in place of Murray, afterwards Lord Chancellor and Earl of Northington.

a right ground for bringing him into the House of Commons, and they may go hand in hand. I have obeyed your Grace's commands in writing to him....

[The Chancellor wrote to Charles Pratt the same day offering him the second justiceship of Chester, which, however, was declined (H. 246, ff. 262, 285).]

*Duke of Newcastle to the Lord Chancellor*

[H. 68, f. 88.]

KENSINGTON, Oct. 11, 1756.

[He announces the good news of the victory of the King of Prussia over the Austrians at Lobositz, and proceeds] I found the King at first much pleased with this success, but in discourse many things passed which I did not like, great apprehension of the future increase of the King of Prussia's power, expecting advantages for himself, as the King of Prussia would certainly have new acquisitions from this war, and in short that things might go to that degree that the King himself might call in France against the King of Prussia in the empire. I softened as much as I could.... I went to the Duke [of Cumberland] who was much more wrong on the other side...that we must support the King of Prussia (there he is right), that the more powerful he was the better, that the Dutch were a clog upon us, that we had better have them against us, for to that I brought him; that, in short, if the King of Prussia was with us, he was more able to support us than the House of Austria is, and with H.P[russian] Majesty we were to combat the Queen of Hungary, France and Russia; that in the long run we must do what we would in N. America. These discourses have much abated for the present my joy on the great good news received early this morning.

ever yours,

HOLLES NEWCASTLE.

*Duke of Newcastle to the Lord Chancellor*

[N. 183, f. 251; H. 68, f. 94.]

NEWCASTLE HOUSE, Wednesday, Oct. 13, 5 o'clock, 1756.

MY DEAREST LORD,

You will not have expected to receive so soon a kind of resignation from Mr Fox....His reasons are many, the King, the Ministry etc: but that on which he rests is his want of power in the House of Commons, in the disposition of employments (the old story). If you would have my opinion...he makes use of this opportunity of distress to put the knife to our throats to get his own terms and all the power he wants which, he thinks, we cannot now refuse him. He talked the old language, that *I* thought *I*

could govern the House of Commons without giving power to the person at the head of it, and such stuff as that. Have not Mr Fox's friends been sufficiently considered in the House of Commons? Have I failed to support any one single recommendation of his to the King? His Majesty knows the truth of this and has often blamed me for it....In short more attention I could not show, even to your Lordship. When shall I see you here? Does not this situation make you think it necessary to hasten at least your return to town? It is possible (or it will certainly come to that, if it is not so already) that this is done in concert with Pitt, or will soon be followed by a concert. Fox talks Pitt's language about the minister in the House of Commons, but without foundation. I am hand and heart for Pitt at present.

ever yours,

HOLLES NEWCASTLE....

*Mr Fox to the King, deliver'd to the Duke of Newcastle by Lord Holderness, part of it having been underlined by his Majesty, and, by the King's express command, the Duke of Newcastle is to preserve it.* KENSINGTON, Oct. 15th, 1756.

[H. 3, f. 353; N. 183, f. 303.]

Oct. 13th, 1756.

Some months ago, speaking of the impossibility of gaining over Mr Pitt, at a less rate than making him Secretary of State, I told the Duke of Newcastle (and afterwards said to the Chancellor) that whenever that should be his Majesty's pleasure, I would resign; take an inferior employment, and give all the assistance I was capable of.

Ten days ago Lord Barrington put me in mind of this; and told me that the Duke of Newcastle had, the day before, said that if he was sure it would not offend me, his Grace would offer my place to Mr Pitt, the next day. I, at Lord Barrington's desire, told the Duke of Newcastle again, that, whenever it was his Majesty's pleasure, I was ready.

I hope this is in negotiation; for tho' I have behaved in the best manner I have been able to the Duke of Newcastle, yet I find that my credit in the House of Commons diminishes *for want of support, and think it impracticable for me, to carry on his Majesty's affairs there, as they ought to be carried on*<sup>1</sup>. And therefore beg leave humbly to acquaint his Majesty that I wish some new arrangement may be made, in which, if his Majesty thinks me worthy of any employment, not of the Cabinet, I will attend, and give all the assistance I can in Parliament.

H. F.

<sup>1</sup> "The King underlined the paper in Lord Granville's presence to show him what part he was offended at." See below, p. 323.

[On the same date (N. 183, f. 314) Fox writes to the Duke of Newcastle that the step which he is going to take] is not only necessary but innocent. It shall be accompanied with no complaint; it shall be followed by no resentment. I have no resentment, but it is not less true that my situation is impracticable.

*Lord Chancellor to the Duke of Newcastle*

[N. 183, f. 279; H. 68, f. 120.]

WIMPOLE, Oct. 14, 1756.

MY DEAR LORD,

At my rising this morning, about seven o'clock, I was surprized with your Grace's letter of yesterday evening and the copy of Mr Fox's enclosed in it. I agree with your Grace that his real view in the step *which he is going to take* (as he calls it) is—to make use of this opportunity of distress to get his own terms and all the power he wants. If the King would take him at his word and come roundly into a resolution to take in Mr Pitt etc: (for one cannot define the other particulars), I think he would be disappointed and repent this hasty measure. But Mr Fox depends upon it that this will not happen; and it is very remarkable that this proposition of quitting should come, and be to be executed, through my Lady Y[armouth] the very day after she had told your Grace *that you must do the best you could with Mr Fox, for that you could not change him....* If Mr Fox has found reason to think that the King has been newly set, or has set himself, against taking in Mr Pitt, he may think such an opportunity advantageous to bring about his purposes. For (though I may be mistaken) I can never persuade myself that he wishes to quit, or that the Duke of Cumberland intends he should.... I cannot help thinking that his fears, from the present situation of affairs and the weight which will lie upon him to support them in the House of Commons, and his desire not to be obliged to avow himself openly a party to the measures, is some ingredient with him.... I submit to your Grace whether you would not show the King that Mr Fox has no reason to take this part from any ill usage which he has received...; that this time twelve month the question was whether his Majesty should take in Mr Fox or Mr Pitt, and his Majesty very graciously showed his predilection for Mr Fox and preferred him; that this was a very high distinction and obligation, and now Mr Fox chooses this very time, when the King's affairs are under difficulties and the session of Parliament is very near, to leave him. That if he does so, it is Mr Fox that lays his Majesty under the necessity of taking in



Mr Pitt, for that there is no third party to take. It must be either the one or the other. If the King should say, *But Pitt won't come*, I would humbly advise your Grace not to give in to that but, without affirming anything, to suppose it not impracticable....

Your Grace knows that I had fixed to come to town the latter end of the next week....It will be extremely inconvenient for me to come before, but if your Grace sees it to be necessary, I will come the beginning of the next week....

I am, my dearest Lord,

ever yours,

HARDWICKE.

*Duke of Newcastle to the Lord Chancellor*

[N. 183, f. 281; H. 68, f. 100.]

NEWCASTLE HOUSE, Oct. 14<sup>th</sup>, 1756.

[Complains of Fox's intrigues and proceeds to describe his own interview with the King.] His Majesty did not quite care to begin, as all his information came from my Lady Yarmouth<sup>1</sup>. I soon removed his difficulty. The King said, "What is the meaning of this?"—I then told his Majesty how much surprised I was at his (Mr Fox's) letter,...and I talked upon the complaints and the little foundation for any of them, pretty much as your Lordship is so kind as to advise by your letter....The King, however, mentioned the supposed message by Lord Barrington with some dislike, blaming me (as usual) for talking to such people etc:...The King afterwards expressed himself with great bitterness against Mr Fox and said that he had never been quiet since Mr Fox was in the council. He reflected upon his family and mentioned what had been done for them [and supported the Duke's assertions of his recommendations of Fox's friends]. "But," said the King, "what is to be done?" I said, "Sir, my Lord President said there was but one of two things to do, either to gratify Fox in what he wanted (which, said I, would perhaps be giving Mr Fox more power than your Majesty would think proper) or to take in Mr Pitt." "But," replied the King peevishly, "Mr Pitt won't come." "If *that* was done," I said, "we should have a quiet session." "But Mr Pitt won't do my German business." "If he comes into your service, Sir, he must be told he must do your Majesty's business. I have wrote, Sir, to the Lord Chancellor."—"Well, what says the Chancellor?" "I have not his answer, but I know what he will say—if this gentleman won't continue, we must go to the opposition." "But I don't like Pitt: he won't do my business." "But unfortunately, Sir, he is the only one (in the opposition) who has ability to do the business."—"Something must be done, my Lord, you must consider; I will talk

<sup>1</sup> With whom Fox had had an interview.

to Fox, and see what I can do.”—“He will not talk to you, Sir, (as I understand by my Lord President).”—“I will begin with him.”—“Sir Thomas Robinson told me, Sir, that if it was now made up, it would break out again in a month or six weeks.”—“We shall, however,” says the King, “gain time, if he would stay this session only.” The King said, “Well, my Lord, I shall see you tomorrow.” My opinion is that his Majesty wishes to avoid Pitt and would go a great way to gratify Fox. At the same time, if the King could be assured that Pitt would *do his business*, I think, he might be brought to take him in.

...I think Pitt must come; and if Leicester House are not in the combination with the Duke of Cumberland and Fox, their eyes must now be opened. They must make Pitt come. I know his demands will be high. He will come as a *conqueror*. I always dreaded it. But I had rather be conquered by an enemy who can do our business, than by one in conjunction with us, who has deserted us, assigned false reasons for so doing, and has it not in his power to do his own or our business....I will endeavour to keep things open till you come, and come, I hope, you will soon. You see your old, your faithful servant alone, beset on all sides, scarce knowing what to propose and less how my proposal would succeed. The whole is levelled at me.

Pallas, te hoc vulnere Pallas

Immolat.

I am now to be paid for my old faults. You must see who is at the head of this scheme<sup>1</sup>. I observed and told Mr Stone that I saw an unusual coldness there, on Monday last....Every word you *write* is (as Sir Gilbert Heathcote<sup>2</sup> said) *sterling*. How much then must I wish for your presence? I will stave off everything (if I can) till you come. But for God's sake, my dear Lord, be here on Monday, if you can, or at latest on Tuesday....

*Duke of Newcastle to the Lord Chancellor*

[N. 183, f. 306; H. 68, f. 122.]

KENSINGTON, Friday, Oct. 15, 1756, near four.

MY DEAREST LORD,

...I found the King in good humour<sup>3</sup>. I began with the paper which I had seen. I showed how insidious, and indeed false, it was in every part—the introduction as if we had proposed or mentioned Pitt to him and he always deferring to the King.

...“What is to be done, my Lord? I [the King] know a person of consequence, sense and good intentions” (which person I know to be my Lord Hyde)...“said that there were but three things—to

<sup>1</sup> Duke of Cumberland.

<sup>2</sup> Sir Gilbert Heathcote (c. 1651–1733), Lord Mayor, noted for his riches and his parsimony.

<sup>3</sup> The Duke's notes for his interview with the King, N. 183, f. 277.

take in Pitt, to make up with my own family and, my Lord, I have forgot the third. Pitt, says the person, is a man that when once he has taken a part, will go through with it steadily, honourably and more ably than Fox." "That, Sir," says I, "everybody says." I then showed the King a proper extract of your Lordship's letter, which had such an effect that his Majesty ordered me immediately, or gave me leave, to have Mr Pitt sounded, whether he would come and support the King's affairs and be Secretary of State, but *that* was not to be named at first; but what was more, "*that if he would, he should meet with or have a good reception.*" These were the King's own words and great use may be made of them. They must make an impression.... Lord Granville told me that he found the King was so angry with Fox that he had rather have anybody than him. The King underlined the paper in Lord Granville's presence to show him what part he was offended at. The King told Granville that he had done too much for Fox, enumerated all the places and graces which he had showed him (I put his Majesty *au fait*), and then ordered my Lord Granville to tell Fox that he was much offended at this step, and that he would have him appeal to his own conscience whether he had done right in these circumstances. My Lord Granville told me he should carry the answer immediately, that he should not repeat the strong things which the King said, that he would do no hurt, that he would still endeavour to make him alter his mind, if it was only for one session.

But this makes it absolutely necessary not to lose a moment in applying to Mr Pitt.... The King talked with the greatest kindness of your Lordship; agreed I should write to you and consult with you. I told him I would send for your Lordship to be in town on Monday, and I do hope in this great crisis... that your Lordship would be in town on Monday night<sup>1</sup>.... The King asked me, "Suppose Pitt will not serve with you"; "Then, sir, I must go." He said most graciously and good humouredly, "My Lord, I know your faults, but I know also your integrity and zeal for *me*."—"That, Sir, will be the same."—"But, my Lord, you will not be able to do me the same service when you are not in the ministry."—"If, Sir, there is a concert between Fox and Pitt, they must make the administration."—In short he was in excessive good humour.

...My Lord Holderness and I went together to Lady Yarmouth, whom we found quite altered, saying good things of Pitt; but there must not be one moment lost<sup>2</sup>.... Where shall we be if my Lord Granville persuades Fox to send him to the King to let His Majesty know that since he is offended with the part Fox has taken, he will submit himself to the King and stay as long as his Majesty shall think it for his service? Upon turning it every way with Holderness and my Lady Yarmouth, she was of opinion with us; and she allows me to tell you that it is our joint advice and desire, that your Lordship would immediately upon the receipt of this letter, write

<sup>1</sup> See *Bedford Corresp.* ii. 202.

<sup>2</sup> Lady Yarmouth always reflected faithfully the King's wishes.

yourself to Mr Pitt, to desire he would be in town on Monday and that you would call upon him on Tuesday morning. This is now in your Lordship's power. Don't boggle at it: you see the King wishes it. My Lady Yarmouth advises it; and if it is not done before Lord Granville returns to court tomorrow and the Duke sees the King on Sunday, nobody can tell whether it will ever be done at all, and then it will fail purely from a scruple or nicety in yourself....All the answer I desire to this letter and the other voluminous one, is to have leave to meet you at Powis House on Monday evening and to let me know that the wishes of all your friends are complied with, and that you have wrote by this messenger to Mr Pitt...ever yours

HOLLES NEWCASTLE.

P.S. If Lord Granville should succeed, and your Lordship has wrote and by that means a step is taken in consequence of the King's orders with Mr Pitt, it will be impossible then to go back.—The point is to take a step.

*Lord Chancellor to the Duke of Newcastle*

[N. 183, f. 318.]

WIMPOLE, *Saturday, Oct. 16, 1756.*

MY DEAR LORD,...

I resign myself to the Countess of Y[armouth]'s opinion and yours, though I cannot help having my doubts and thinking that this negotiation had better have been first entaméed in a more private channel. I have writ to Mr Pitt as your Grace desires...and purpose to be at your service at Powis House on Monday evening.

I cannot help thinking that there is some hazard in taking this step, before the effect of my Lord President's and of a still greater person's seeing the King is known. If an alteration should be produced, Mr Pitt will be much offended at being so treated. That H.R.H. is in this affair is, in my opinion, plain, from his declining to speak upon it or to stay in town. But H.R.H. cannot be in earnest that Mr Fox should quit, and therefore there must be some underplot which don't yet appear, at least there is room to suspect it. Mr Fox by the preamble of his paper, will have the merit of proposing Mr Pitt to be Secretary of State and quitting in his favour, and this directly to the King himself, which, he will say, nobody else would do. It gives room also to suspect (as your Grace has done) that there may be some concert between him and Mr Pitt; and if so, what can the terms be except that Mr Pitt shall absolutely refuse to come in, unless the administration is changed? I am told that Mr Pitt's little place in the country, is

very near Mr Calcraft's, where Mr Fox uses frequently to go down on a Saturday<sup>1</sup>....

I am quite tired of these embroils and really grow too old for them; but one thing will never wear out, I mean the truth and affection with which I am, my dearest Lord,

ever yours

HARDWICKE.

*Lord Chancellor to Mr Pitt*

[N. 183, f. 320.]

WIMPOLE, *Saturday, Oct. 16, 1756.*

SIR,

I ask much pardon for the liberty I am now taking which nothing can excuse but the occasion. Being desirous to speak to you upon an affair of great consequence, I purpose to be in town on Monday night, and must beg the favour of you to give me the meeting some time on Tuesday next in the forenoon. I hope this will not be inconvenient to you, and would propose to have the honour of seeing you at Lord Royston's house in St James's Square, at such hour as you shall appoint. If any other place is more agreeable to you, it will be the same thing to me.

I sincerely congratulate you on the birth of your son<sup>2</sup> and hope my Lady Hester and he are both well.

I am, with great respect

Sir

Your most obedient and

Most humble Servant

HARDWICKE.

[Mr Pitt replies accepting for 12 o'clock (N. 75, f. 180).]

*Rt. Hon. Henry Fox to the Lord Chancellor*

[H. 246, f. 289.]

HOLLAND HOUSE, *Oct. 18, 1756.*

MY LORD,

As I am afraid the inclosed<sup>3</sup> has been the occasion of your Lordship's coming from the country sooner than you intended,

<sup>1</sup> John Calcraft (1726-1772), clerk in the commissariat and made by Fox, of whom he was reputed to be the son, army agent, in which capacity he corruptly amassed an enormous fortune. Later, however, he deserted Fox for Pitt. One of his residences appears to have been Ingress Abbey, Belvedere, in Kent, which would not be far distant from Hayes.

<sup>2</sup> Afterwards the second Earl of Chatham.

<sup>3</sup> f. 291. The memorandum already printed, p. 319.

I think it my duty to lay it before your Lordship<sup>1</sup>. I always knew the system begun at Mr Pelham's death was impossible. I own I feared that it would not be departed from when I took the Seals, which I took unwillingly. My behaviour to H.M. and to the D. of Newcastle since I took them, I leave to the D. of Newcastle to relate. When I wrote the inclosed I had hopes that a negotiation with Mr Pitt was begun. It is the only good party, my Lord, that can be taken. And do not, my Lord, imagine that I only say I will act in an inferior employment; I mean it and will do it. If I have had ambition, this year has thoroughly cured me of it; and with my ambition all possibility of resentment is gone likewise. At Mr Pelham's death some things (which I do not care to recall to my mind) happened which made me angry<sup>2</sup>. I have now, upon my word, no anger, and could with as much ease of mind converse with the D. of Newcastle on this as with any man on any subject. I will in any station (not of the Cabinet) support the King's measures; I should indeed except that measure of governing the House of Commons by the Duke of Newcastle only. But it is unnecessary to except what its own impossibility must put an end to. Give me leave to wish H.M. may not desire I should continue in the station I am in. It would not be for his service; it would look as if I had taken this step in hopes of more power; whereas my aim is to get out of court, and my justification in so doing the impossibility of my carrying on the King's affairs now as a minister, even if I had more power given me.

I am, with the greatest respect, my Lord, your Lordship's

Most obedient and most humble Servant

H. Fox.

*Lord Chancellor to the Duke of Newcastle*

[N. 183, f. 360.]

POWIS HOUSE, Tuesday, Oct. 19, 1756, 4 o'clock.

MY DEAR LORD,

I am just come from my conference which lasted full three hours and a half. His answer is an absolute *final negative* without any reserve for further deliberation. In short there never was a more unsuccessful negotiator. I beg your Grace will have the goodness to excuse me for not waiting on you before dinner, for the time would not suffice to relate it, and in truth I am so tired that I should not have spirits and breath to do it. If your Grace will

<sup>1</sup> Cf. Fox to Dodington, October 19 (*Hist. MSS. Comm.*, M. Eyre Matcham, 36), "The Chancellor did not come to town till last night. The D. of N. did not know his own mind till then, if he does now."

<sup>2</sup> See above, p. 194.

send me word by the bearer at what hour I should attend you after dinner, I will not fail<sup>1</sup>.

ever yours

HARDWICKE.

*Duke of Newcastle to the Lord Chancellor*

[Endorsed by the latter: "After I had related to the King the Conference which had passed between me and Mr Pitt the day before, I read all that part of this letter which is scored to his Majesty literally and distinctly."]

[H. 68, f. 127.]

NEWCASTLE HOUSE, Oct. 20, 1756.

MY DEAREST LORD,

Though a consciousness of my own innocence and an indifference as to my own situation may, and I hope in God will, support me against all the wickedness and ingratitude which I meet with, yet your Lordship cannot think that I am insensible of, or senseless to, the great indignity put upon me by these two gentlemen. Next to my own innocence, my only consolation is the justice which the King does me, and therefore I hope that His Majesty will look upon this refusal of Mr Pitt and the reason he gives for it in the same favourable light for me that he has done Mr Fox's quitting and his accusation of me. Though I don't in the least doubt your friendship, justice and prudence, allow me only to suggest to your Lordship the necessity of making the King see that the whole is a concert between Mr Pitt and Mr Fox. The views and principles upon which they act [are] the same viz: to make themselves necessary and masters of the King; that the accusation of me is the most unjust, grounded upon false or rather no facts; that the only thing Mr Pitt alleges against me is the *conduct of the war* in which, as far as relates to the land war, I have absolutely had no share, and as far as relates to the sea, no other share but concurring in what was the unanimous opinion of every person present; that I never had the least share in appointing any commanding officers, either by sea or by land, and, (what is remarkable), never gave any one order or wrote one line to any of them, except what immediately related to the Treasury, and your Lordship will show *where* this unjust attack is meant. It is above me to give any advice<sup>2</sup>. The King must talk to his other servants, the President, the Duke of Grafton and the Duke of Devonshire. You will lay me in the humblest manner at the King's feet, with the highest sense of His Majesty's goodness to me and with the utmost resignation to his royal will. But you will particularly assure His Majesty that, as I find my continuing in his service is made a reason for others to decline it, I shall, with the same zeal, duty and cheerfulness, receive

<sup>1</sup> p. 276.

<sup>2</sup> From this point read to the King.

his commands to retire, and serve him as a private person and ever zealous subject. That I have always endeavoured to do whilst I was in his service.

I am, my dearest Lord,

ever yours

HOLLES NEWCASTLE\*.

*Lord Chancellor to Lord Royston*

[H. 3, f. 351.]

POWIS HOUSE, Oct. 21, 1756.

DEAR ROYSTON— \*

'Tis a vulgar saying that walls have ears; and, if they had tongues also, the walls of your dressing-room would tell you a very long story. There was the scene between your friend Mr Pitt and me last Tuesday in the forenoon, which I chose as the place freest from objection. The conference lasted full three hours and a half, to the astonishment, I fear, of Mrs Saubere and John Godfrey; who must, according to their bounden duty, have told you before now their suspicions of some terrible plot. But to confess the truth—surely never was a more unsuccessful negotiator. We fought all the weapons thro', but his final answer was *totally negative*. He was very polite, and full of professions to me, but the great obstacles are the D. of N. and measures; and without a change of both, 'tis impossible for him to come. I made my report yesterday to the King, and after having made it three times over you may be sure I have no mind to write it. His Majesty was extremely gracious to me, grave, but not much moved. Mr Fox has not yet delivered up the seals, but appears determined to do so; and the King as much determined not to suffer him to keep them if he would. But I believe, in consideration of the present circumstances, his Majesty will give him some other employment in his service, not in the Cabinet council. He is much provoked at Mr Fox for the part he has taken, and more especially for the time he has chosen to act it in. But at present everything is in uncertainty, and nothing settled. If you have not seen Fox's paper, I send it you inclosed. 'Tis the copy which he sent me himself, with a very civil letter, the moment I came to town. He took me yesterday into a corner, at Kensington, and told me his

\* N.B. There was no other concert between Pitt and Fox, than both uniting in a desire to get rid of the Duke of Newcastle. The latter had certainly a desire to be connected with the former, who, when he came in, would have nothing to do with him. The Duke of Cumberland was Fox's principal abettor and adviser. H.



story and pretended grievances. 'Twas all civility and complaisance to me ; but that goes for nothing. The *concurrent plan* of both those gentlemen is to load the D. of N. They deny any concert, but I am convinced that I see symptoms of it....

Yours most affectionately

...

H.

P.S. I must add to my letter of this day a phenomenon which appeared at court at noon, and which I did not then know. Mr Pitt sent this morning to my Lady Yarmouth to desire leave to wait upon her. He had that leave and was with her a great while. Nobody knows what he has said to her, except that he has made vast professions to the King, and proposed to her Ladyship some sort of plan ; but whether he has adhered to, or receded from, what he said to me she has not said, for she would say nothing till she had related it to the King. I understand he has flattered me black and blue, but, if that be all, it passes for nothing. He will come to the King's levee to-morrow, and I guess bring his suite along with him. You may imagine that this sets all the court at gaze. I hear that Fox makes no part of his plan, which looks a little like concert with Leicester House. What is most remarkable is, that he had never been with my Lady Yarmouth before in his life. You who have read so many negotiations, know that great and important treaties are seldom settled by the plenipotentiaries, but at the court of one of the contracting powers. I think I have now told you news enough for one day. Adieu.

*Attorney-General to the Lord Chancellor*

[H. 246, f. 298.]

*Sunday night, Oct. 24, 1756.*

MY LORD,

I am just come to town and found your Lordship's letter. It is impossible to say how much I feel your Lordship's great goodness and attention to me throughout this whole affair<sup>1</sup>. The business of my life at all times, and on all occasions, shall be to show the gratitude with which I have the honour to be

Your Lordship's most obliged and obed<sup>t</sup> hum. Serv<sup>t</sup>

W. MURRAY.

<sup>1</sup> His promotion to the bench and the peerage.

[*Endorsed*] *Copy of Letter [from the Lord Chancellor] to Col. Yorke containing a narrative in general of what had passed with Mr Pitt to that day.*

[H. 9, f. 66.] Most Secret.

POWIS HOUSE, Oct. 31, 1756.

DEAR JOE,...

An event has lately happened which has been attended with consequences, so very material and interesting, that I have waited only for time and opportunity to give you a particular detail of it.

Some time before I went out of Town in the Long Vacation, now full three months ago, Mr Fox desired I would appoint him an hour to have some conversation with me. He came and it was a long one. He entered into the state of public affairs and the difficulties which would arise in carrying on the King's business the next session of Parliament, unless some additional support was gained. Fearful for the public and for the weight upon himself, he then gave it as his firm opinion that it would be impossible, unless the King would be induced to make an accommodation in his own family and Leicester House would unite with the Administration, or else Mr Pitt was taken in. To the first branch of the alternative I gave him the proper answer. That he knew such terms were insisted on by Leicester House that the King only could determine upon them by himself, the affair being domestic and concerning his honour and authority, as Father as well as King. As to the latter branch, I told him that he knew and I would not affect to disguise from him, that I had been no enemy to Mr Pitt, but there were now three difficulties in the way. First, I doubted much whether the King would yield to it; in the next place, if he would, I also much doubted whether Mr Pitt would come, in the present circumstances; and in the last place he (Mr Fox) knew that Mr Pitt's ambition was the very place he filled; that, so far as I knew, everybody was well satisfied with him and nobody meant to hurt him, and this was an obstacle insurmountable. To this last point he said, what the King would yield to he could not tell. He was sure His Majesty was not *satisfied with what is* (meaning himself), and he thought the difficulty of His Majesty's affairs would get the better of his aversion. As to him (Fox), he should be very ready to make that matter easy, and should be found more reasonable in the terms of doing it than possibly I might imagine. I said I had told him

my thoughts and did not see how it was practicable. He said he had before held the same language at large to the Duke of Newcastle, and indeed of this his Grace had already informed me.

Thus things remained and nobody heard any more of this proposition till the 15<sup>th</sup> of October, which was near three weeks after the Parliament was declared to sit on the 18<sup>th</sup> of November, and within about a month of the time of its meeting. The opportunity was also taken when Mr Murray, who had been the chief support of debates in the House of Commons, was determined to leave it to be made Lord Chief Justice. It is remarkable further that it was some days after the King had gratified the Prince and Princess of Wales in everything, so that the reconciliation there was made as far as possible, and the first branch of his alternative was complied with.

The enclosed copy of Mr Fox's paper will inform you of the step which he then took to the surprize of the King and all his servants. It was sent down to me at Wimpole on Saturday the 16<sup>th</sup>, with the King's orders to come to Town on the Monday following and to appoint a meeting with Mr Pitt.

I came to town on Monday night, and within ten minutes after I came into the house received a letter from Mr Fox of which you have also a copy enclosed<sup>1</sup>.

I had my meeting with Mr Pitt on Friday [*i.e.* Tuesday, October 19] at Lord Royston's. It lasted three hours and a half and everything passed with the greatest professions and flattery to me. I offered him, by the King's permission (not command), the office of Secretary of State, but the result was that Mr Pitt absolutely refused to come into the King's service whilst the Duke of Newcastle continued in the same administration. The particular reason he assigned was, that all these mistakes in the conduct of the war had been committed, and all these ill successes had happened, whilst his Grace was first Minister, and the nation was (as he said) to the last degree incensed against him. Therefore, he concluded, it was impossible for the Duke of N. to keep his ground or for anybody to go on with him; tho', by the way, the Duke of N. has had no more direction in the measures of the war than any one of seven of us. There was much expostulation between us, but so it rested; for tho' he threw out several other conditions, this was a *sine quâ non*.

I made my report on Wednesday to the King, who entirely

<sup>1</sup> Above, p. 319.

disapproved his terms; but on the Thursday Mr Pitt took another *more private* channel<sup>1</sup> to the King, where he had never been before in his life. Then he talked over the same things and went so much further as to propose his plan of a new administration, a most extraordinary one indeed, but without naming either my employment or the Head of the Admiralty.

His Majesty was more offended at this than before, tho' he kept his temper. He sent for me and ordered me to give him his answer; for, said he, "Mr Pitt shall not go to *that channel* any more; *she* does not meddle and shall not meddle." But his Majesty expressly restrained me from avowing or hinting to Mr Pitt that I knew anything of what had passed in that *secret way*, or so much as that he had taken that channel.

The King dictated his answer which was literally this—"His Majesty is of opinion that what has been suggested is not for his and the public service."

The answer was prudent and not provoking, but the restriction laid me, as I told His Majesty, under the greatest difficulty; for Mr Pitt might take this as an answer only to what he had said to me and might go to the same *private channel* again for an answer to what he had suggested there, or at least affect to believe *that* unanswered. I pressed that the answer might be given by the same *secret channel*, but the King persisted and I obeyed.

Mr Pitt came to me by appointment on Sunday night [October 24]. I gave him the answer by word of mouth and repeated it, and turned my conversation so luckily that I was sure he must understand it as an answer to *both* without naming or describing the *secret channel*<sup>2</sup>.

Thus it rested as to Mr Pitt till last Thursday or Friday. In the meantime the Duke of Newcastle considered and consulted with such as were best informed as to the strength in the House of Commons and the possibility of getting another leader there besides Mr Fox or Mr Pitt; for the last of these gentlemen, you see, will not come to the Duke of N., and the former will not stay with him, and had even then departed from his proposal in the conclusion of his paper of accepting another office and supporting.

Another leader of sufficient strength could not be found and numbers grew doubtful, so that the Duke of Newcastle came to an opinion that it was best for him to quit and told the King this opinion.

<sup>1</sup> Lady Yarmouth, above, p. 277.

<sup>2</sup> Above, p. 279.

His Majesty, tho' angry with Fox, was more inclined to him than Pitt, for a reason you know—his connection with another quarter of the Court<sup>1</sup>.

If the Duke of Newcastle should go out, I am determined to do so too; not for that reason only, but also for many others. It would be disgraceful and ridiculous for me to continue in, in order to act an under part in subordination to these young gentlemen at my time of life, stript of my old friends—tired of this laborious office, more disagreeable and long attendances than ever. The fatigue and vexation would soon wear out the little remains of health and life which God has preserved to me. I made the King feel the weight of all these reasons, but he still presses me to stay with him, is most gracious to me and has already made your brother Charles Solicitor General as a mark of his favour to me, and as a pledge that I will serve him whether in or out.

In the meantime Mr Fox has been negotiating round the compass; has fled to Bath to confer with the Duke of Bedford—fled back again and met the Duke of Bedford etc. at Windsor, where your old master has chose to stay all this time. Mr Fox has negotiated with Mr Pitt too, and fancied that he would join him and he (Fox) be at the head of the Treasury, which is the ambition of his heart; has employ'd his friend the Duke of Devonshire with Pitt; but he has put as strong an exclusion upon Fox as upon the Duke of Newcastle. He will not serve with Fox in any ministerial place. He may have a lucrative one.

This is thought all to proceed from Mr Pitt's connection with Leicester House, which is very strange after all the condescensions the King has shown to them, what he has done for them, and their assurances just given by letters under their own hands. Tho' he has named nobody for the Head of the Admiralty, yet he strongly arraigns the conduct of the Admiralty and the management of our fleets and squadrons. He asked the Duke of Devonshire—what does my Lord Anson think himself? His Grace said he did not know, but gave my Lord his just applause and strongly expressed his friendship for him. Mr Pitt said he did not know what to propose, but thought the King should look out for the best man he could find. This is declaring an intention of a change. He has given hints about the army and the conduct of the war in North America. The King sees where that points<sup>2</sup>, and is disturbed at it.

<sup>1</sup> Pitt's connection was with Leicester House while Fox was an adherent of the Duke of Cumberland.

<sup>2</sup> At the Duke of Cumberland.

As to Lord Anson, you may be sure I am as much concerned for him as for myself. If this great change is made, I fear it will be impossible to keep him in place, and that is of no great consequence to him. But the affairs of the Admiralty consist of so many branches, and admit of such variety of opinions, that nobody knows how far enquiries may be carried. Ill success will be worked up into mistakes, mistakes into neglects, and neglects into crimes, where, in my conscience, there is no crime at all.

As to my share, I have told you my intention, and if Lord Anson is forced out, that will confirm me in it. As the term begins on Saturday, I believe the business of the Court will require that I should stay in to the end of the Term, between which and the 2<sup>d</sup> of December I will carry my resolution into execution, unless some scheme is found out in the meantime to keep things consistently on the old foot. I have been long tired with the slavery of my office. With thankfulness to the Divine Providence I see all my children well-provided for and (which is more) virtuous. I own your situation is the most precarious, but you have a fortune of your own and a regiment, and may depend on my best support. Before I take my leave of the King, I will ask his promise of a regiment of dragoons for you, which, I flatter myself, he will not refuse me. Your Ministry in Holland may be of very uncertain duration; but as Lord Holderness will, I believe, keep in, and the King is extremely well-disposed to you, it may not improbably be continued. However, that must not be depended upon. I desire only that you will keep up your spirits and shew a good countenance.

As to business, my advice is that in the meantime you only execute literally such orders as you shall receive, take nothing upon yourself and negotiate as little as possible.

*Tuesday Nov<sup>r</sup> 2<sup>d</sup>.* Under this date I added a paragraph, giving a general account that things still remained in the same unsettled state, and that Mr Pitt rather rose than abated in his demands. Enjoined the secret as to every part of this letter.

*Duke of Newcastle to the Lord Chancellor*

[H. 60, f. 286; N. 183, f. 540.]

NEWCASTLE HOUSE, Nov. 2, 1756.

MY DEAREST DEAREST LORD,

You know, you see, how cruelly I am treated and indeed persecuted, by all those who now surround the King. The only comfort I have is in the continuance of your Lordship's most

cordial friendship and good opinion. The great and honourable part which you are resolved to take will be my honour, glory and security, and upon which I can and do singly rely. I despise testimonies from others who, for their own sakes, as well as mine, I should desire not to give any of that kind at this time. But my dearest Lord, it would hurt me extremely if yours should be *long* delayed. I submit the particular time entirely to you, grateful for it, whenever it shall happen. I must have a Treasury tomorrow and another on Saturday for the despatch of necessary business, and I propose to quit on Monday, for quit before the Birthday I must and will\*....

*William Grant (Lord Prestongrange)<sup>1</sup> to the Lord Chancellor*

[H. 101, f. 68.]

STEVENAGE IN HERTFORDSHIRE, Nov. 9, 1756.

MY LORD,

Permit one of the most humble and obliged of your servants to express to you the thoughts of which he is full, and that have much occupied his mind through this day relating to your Lordship and the public, which is so much interested in your present situation,—though he would not be thought so absurd and presumptuous as to think he can suggest anything worthy of consideration that must not occur to yourself, who are so widely his superior in wisdom and experience as well as in rank and station; yet a great man may deign graciously to hear the reflexions concerning himself of one of his admirers and most sincere well-wishers....

When I heard the rumours at Bath of a great minister's resignation, which I heartily regretted, I took it for granted that the Great Seal would still remain where it has been for near twenty years, because I had never heard or read one objection to the conduct of the Lord Chancellor in his high office of judicature, in which he has for so long a term of years had the chief and highest part in deciding ultimately the properties of all the litigating subjects of the British empire, in both parts of Great Britain, Ireland and the Plantations, and performed that to the happiness and satisfaction of so many millions of people.—Is not this a post, a situation of such glory to the possessor and such utility to mankind, as ought not to be unnecessarily abandoned?—When the continuance in it will, as I apprehend, be most grateful to the King and all his good people and even not ungrateful to the persons, who are to be newly employed in the active parts of government or administration and who have no one wherewith to fill that place....

[Apologises for his intervention.]

\* There was a meanness in the D. of Newcastle's pressing in this manner my Father's resignation, but with some good and honest qualities he had not a great way of thinking. H.

<sup>1</sup> See note vol. i. 551.

[H. 246, f. 355.]

Lord Chief Justice Willes<sup>1</sup> sends his best respects to the Lord Chancellor, and desires that he would give the Lord Chief Baron<sup>2</sup> and him leave to wait on his Lordship some time tomorrow morning, they having a message to deliver to him from all the rest of the Judges. If the morning be inconvenient, they will come at any time in the evening, his Lordship shall be pleased to appoint.... He and the Chief Baron come at the earnest request of all the rest of the Judges, and they will not detain his Lordship above five minutes<sup>3</sup>.

*Earl of Bath to the Lord Chancellor*

[H. 246, f. 318.]

ISLEWORTH, Nov. 10, 1756.

MY LORD,

You have always been very good to me on all applications I have made to you, and therefore I was not in the least dissatisfied at your late refusal to provide for Mr Blair; you was pleased to decree it otherwise and I was sure every decree of yours is and must be equitable and just. Public rumour tells me in my present retreat at Isleworth that your Lordship intends to resign the Seals. I own, as affairs are now circumstanced, I think you are quite in the right of it. You know I always loved and honoured you greatly, and therefore wish to see you retire, in the present confusion, with the great character and reputation you will always deserve; and I am confident in a very little time all mankind will be loudly calling for you again to return to assist a sinking state and restore an almost broken constitution. Perhaps likewise a small retreat may be of great use to your own health....

Your most obedient humble servant,

BATH<sup>4</sup>.

*Lord Chancellor to Lord Royston*

[H. 3, f. 358.]

ST JAMES'S SQUARE, Nov. 11th, [1756].

DEAR ROYSTON,

I call'd only to mention one or two things to you of no very great consequence....I have spoke to his Majesty this day about Joe. He was pleas'd to assure me of his strong approbation

<sup>1</sup> Lord H.'s old rival. See note vol. i. 478.

<sup>2</sup> Sir Thomas Parker, Lord Chief Baron of the Exchequer 1742-1772, died 1784. Lord H.'s life-long friend of 50 years. See vol. i. 54.

<sup>3</sup> The message was no doubt one of farewell from the judges and the Bar on the Chancellor's retirement.

<sup>4</sup> For other letters of this kind, including those from the Princess of Orange and Lord Walpole, see H. 1, f. 31, and H. 246, ff. 337-364.



of his services, and of his intention to continue him in Holland. "I won't suffer them to change my foreign Ministers at their humour."—My Lord Holderness is to continue in. As to the Regiment of Dragoons, his Majesty said that he could not promise him the first that fell; but he would give him one as early as he possibly could....

*Duke of Newcastle to Col. the Hon. Joseph Yorke*

[N. 184, f. 27.]

NEWCASTLE HOUSE, Nov. 12, 1756.

DEAR SIR,

The hurry that I am in this day in seeing numbers of friends upon my retiring from court, which I did yesterday in form, prevents the liberty I intended to take by this post to have acquainted Her Royal Highness with it....

As one of my best friends, I am sure you will be glad to hear that nobody can leave a good and gracious master with more marks of affection and approbation than I have done. That which does me the greatest honour, and which not only graces my retreat but is the highest distinction to my past conduct, is the noble and affectionate part which your great Father acts upon this occasion. Such a testimony of friendship after near forty years acquaintance and intimacy, union in measures and sentiments, puts me at once above reproach, and all the wicked and malicious effects of pride, arrogance and ambition, which from two different persons, acting with different views, have brought about what has now happened; and I must beg that you would let all my friends know that neither apprehension of what might happen in Parliament, or any doubt or mistrust of the most cordial and affectionate support from the King, have occasioned the resolution which I have taken.

Misfortunes incidental to all wars, and more particularly to be expected from this, have, though unjustly, occasioned a flame which, though it did not extend to the members of Parliament, made it necessary to have the assistance of Mr Pitt and Mr Fox, or at least one of them. They both saw that and have made their use of it. Fox gives up a fortnight before the Parliament meets, because I did not give him power enough. Pitt was offered in the handsomest manner, by my Lord Chancellor, to be Secretary of State. He would not come whilst the Duke of Newcastle was in the administration; and when one would not stay and the other would not come, I had nothing to do but to make way for both or either of them. Mr Fox is fallen into his own trap. Mr Pitt with the Duke of Devonshire at his head will have difficulty to support himself. In all events I am happy with the approbation of my

master and the declaration of my best and greatest Friend. Think then, how much and how affectionately I am, yours,

HOLLES NEWCASTLE.

*Lord Chancellor to the Duke of Newcastle*

[N. 184, f. 76.]

POWIS HOUSE, Nov. 17, 1756. Wednesday.

MY DEAR LORD,

I return your<sup>s</sup> Grace a thousand thanks for the honour of your letter of yesterday<sup>1</sup> and for the many kind expressions of your friendship and regard for me....I have done with wonder.... The want of a proper person, capable of interposing in the Closet, begins to be manifest, but we must not be ministers behind the curtain. The new gentlemen begin to ascribe the disagreeableness of their reception to that cause.

My day and hour is fixed. The Master of the Rolls [Sir Thomas Clarke] has declined contrary to my expectation<sup>2</sup>....The commissioners are Willes, Smythe and Wilmot. I have had some trouble to help myself out and them in. I have a cold but not bad; but I chose to get the Master of the Rolls to sit for me today, that I might not begin any cause and leave it unfinished, and so the parties be put to a double expense. I intend to sit at Westminster tomorrow upon motions, which cannot be attended with the like inconvenience, and then prorogue the Parliament and take my leave. On Friday it is settled that I shall go to the Levée, then deliver up the Seal to the King in his Closet, who will immediately after seal the Commission and instantly deliver it to the Commissioners then attending, who will be sworn in his Closet. I proposed and fixed this with his Majesty, that there might be no delay of business, nor his Majesty be troubled with the custody of the Seal. *Sic mihi parta quies, omnisque in limine portus....*

I am, my dearest Lord, ever most faithfully and affectionately yours,

HARDWICKE.

<sup>1</sup> f. 69.

<sup>2</sup> *I.e.* to be a Commissioner of the Great Seal.





*Col. the Hon. Joseph Yorke to Lady Anson*

[H. 40, f. 214.]

HAGUE, Nov. 26, 1756.

[Expresses regret at the retirement of Lord Anson from the Admiralty and his appreciation of his great services.] I was not surprised our *Chief* acted the part he did. He could not in honour act any other, and tho' I am convinced he did not approve all that was done whilst he was in, yet I am sure he would have been bespattered with dirt in six months, if he had kept his place; whereas now he has the good fortune to retire in the meridian of his glory, and to be regretted by all the honest men in Europe (for don't imagine it is confined to England), at the same time that he enables himself to be listened to and followed by those who may hereafter govern our country....

## CHAPTER XXIV

### THE TRIAL AND EXECUTION OF ADMIRAL BYNG

THE trial by court-martial of the unhappy Admiral Byng, which, beginning on December 28, 1756, and concluding on January 27, 1757, took place during the short tenure of office by Pitt and the Duke of Devonshire, engrossed completely for the time public attention in England. The guilt or innocence of the prisoner ceased to be a point of fact and became one of politics, and the real question at issue was soon lost sight of amidst the disputes of faction. The late government, assailed by all the eloquence of Pitt, had been made not only responsible for the whole disaster, but was even accused of having purposely brought about the loss of Minorca to justify the making of a bad peace. The naked truth, however, like a mountain peak hidden for the moment by rolling mists, was only obscured for a time, and finally emerged above these clouds of oratory, conspicuous and unmistakable. The facts were too clear and too well-established for the admiral to succeed in escaping personal responsibility. Much was made on his behalf of the fact that his letters to the Admiralty had been suppressed or mutilated; but the action of the government was defended on the ground of the public interest, and the complete text, when published, only deepened the unfavourable impression already made in his disfavour<sup>1</sup>. He was able to clear his character

<sup>1</sup> They had been written (see below, p. 347) after he had determined on a course of inaction and with the purpose, by exaggerating the difficulties of his situation, of throwing all the blame upon the Government. They were withheld altogether or in part from publication by the ministers, who were unwilling to alarm the public unduly, and in consideration for the admiral's own reputation, while at the same time Byng's aim in writing them was defeated. See p. 353; and Fox to Lord Digby (*Hist. MSS. Comm. Rep.* viii. 221) "Whoever considers dates, must see how wrong it would have been to have published Byng's opinion of his fleet." The letters contained such passages as the following: "I despatched the *Phoenix*, *Chesterfield* and *Dolphin* ahead to reconnoitre

of the crimes of personal cowardice and disaffection, but the Court unanimously pronounced him guilty of not having done "his utmost to take, seize and destroy the ships of the French King," or "to relieve St Philip's Castle," involving the serious charge of neglect of duty<sup>1</sup>.

Formerly the judges of the court-martial had been allowed discretion as to the penalty they inflicted for misconduct before the enemy; but this power, owing to the desire, incidental to weak human nature, of escaping responsibility, had been abused to such an extent as to render the proceedings of courts-martial little better than a farce. In 1749, accordingly, owing to the many cases of professional misconduct and of the failure of the courts-martial to fix the responsibility upon the proper persons and to award due punishment, the articles of war were revised and this discretion was withdrawn. The new 12th article now provided the death penalty, and no other, for "cowardice, negligence or disaffection," while the power of pardon, which had before been practically exercised by the courts-martial, was restored to the proper authority, the Crown<sup>2</sup>.

The wisdom of this measure, intended expressly for a case of this kind, is clearly shown by what now actually took place. The members of the court-martial who, it is said, had offered a scarcely judicial display of their feelings in pronouncing sentence,

the harbour's mouth, and Captain Hervey to endeavour to land a letter for General Blakeney to let him know the fleet was here to his assistance; though every one was of opinion we could be of no use to him"; and another in which he claimed the victory. See the three letters, pp. 287, 291-5; and cf. in this connection the omissions in the publication of Wolfe's letter from Quebec, vol. iii. 238.

<sup>1</sup> *Trial of Admiral Byng* (1757), 474. Col. J. Yorke, who had shown great independence of opinion, in spite of his close ties with the ministers, and had at first, before the whole facts became known, been, with the majority, inclined to justify Byng and throw the blame upon the government (see above, p. 269), writing on January 25, 1757, expresses satisfaction at the manner in which the court-martial had been conducted and declared the result "at least a strong justification of the late admiralty, and must do credit to those who have been so infamously treated." On February 15 he affirms that the facts proved against Byng "fully justify those who planned the design and entrusted him with the execution of it, of which nobody has at present the least doubt." On March 1 he writes, after reading the trial, "Undoubtedly never facts were proved clearer against an officer," and on March 11, "I never was clearer that a man was guilty in my life." H. 16, ff. 176, 188; H. 40, ff. 231, 235; and H. 9, f. 106.

<sup>2</sup> *Statutes at Large*, xix. 328, 22 George II, c. 33; below, p. 358. A. T. Mahan, *Types of Naval Officers* (1902), 93-7, who adds that exactly the same difficulty with courts-martial was experienced in the United States at the beginning of the Civil War, and who points out that "negligence is ranked with more positive faults, because in practice equally harmful and equally culpable. Every man in active life, whatever his business, knows it to be so." Cf. the Vernon incident, vol. i. 196.

and who had "manifested grief, anxiety and trepidation, shedding tears and sighing with extraordinary emotion<sup>1</sup>," unequal to the painful load and strain of responsibility, proceeded, immediately after giving sentence, to "lay the distresses of their minds" before the Lords of the Admiralty, deploring the severity of the articles of war which, they wrote in strange confusion, "admit of no mitigation, even if the crime should be committed by an error of judgment only," and recommending earnestly the accused for mercy, "for our own consciences' sake as well as in justice to the prisoner<sup>2</sup>."

The Lords of the Admiralty, whose chief now was Lord Temple, a deep, dark and unscrupulous character, long Pitt's evil genius and now one of Byng's principal supporters, in their turn affected doubts of the legality of the sentence, and endeavoured to throw the responsibility of a decision upon the King, to whom, greatly to his indignation<sup>3</sup>, they sent the letter of the members of the court-martial together with the account of the proceedings. The King, however, submitted the matter to the twelve judges, by whom the legality of the sentence was at once established. The enemies of the late administration now joined the personal friends of Byng to prevent, by every possible means, the carrying out of the sentence. The severity of the 12th article, which allotted the death penalty for neglect of duty, and which allowed no discretionary powers to the court-martial, was assailed, though this was a regulation recently passed on account of the abuse of this very power and in view of cases such as the present. Cries were raised that Byng was being sacrificed, as a scapegoat, to atone for the negligence and incapacity of the administration; that he was being punished, not for a neglect of duty but for "an error of judgment," to which any man was liable, and that "a judicial murder" was being committed. Pitt and Lord Temple espoused publicly his cause and

<sup>1</sup> Smollett, quoted in *Parl. Hist.* xv. 823.

<sup>2</sup> "The whole world condemns the Court Martial and I don't wonder you should be disgusted with the absurdities of those tribunals which indeed pass all understanding." Col. J. Y. to Lord Royston, February 11, 1757 (*H.* 16, f. 180): "The foreign world is full of Mr Byng's trial and sentence and criticise greatly the contradictions in the sentence of the Court Martial, which, they say, finding him fall under the law, had no business but to take notice of that, leaving everything else to those who should confirm the sentence....I have seen more examples than one of the same nature." February 8 to Lady Anson (*H.* 40, f. 230).

<sup>3</sup> Richard Rigby to the Duke of Bedford, January 28, 1757: "The Monarch is, as your Grace will easily imagine, horrid angry with the Court Martial who have shoved the odium of Byng's death, if he is to suffer, in some measure off their own shoulders." *Bedford Corresp.* ii. 229.



pleaded in vain with the King. "Lord Temple," wrote Richard Rigby, "pressed him some days ago very strongly for a pardon for Mr Byng. His Majesty persevered and told his Lordship flatly he thought him guilty of cowardice in the action, and therefore could not break his word they had forced him to give to his people, to pardon no delinquents<sup>1</sup>." A letter of recommendation from Marshal Richelieu, who wrote "Tout ce que j'ai vu et su de lui ne devait tourner qu'à sa gloire," was sent over by Voltaire, in hopes of saving the admiral and to encourage the French navy by his preservation<sup>2</sup>. The members of the court-martial persistently urged the authorities to save his life. The President, Admiral Smith, though satisfied of the prisoner's guilt, shrank from the infliction of the penalty of death<sup>3</sup>. Captain Augustus Keppel declared in the House of Commons that he, and four others of the judges, desired to be absolved from their oaths of secrecy, as they had something to disclose. Subsequently two of these individuals denied that they had anything to bring forward<sup>4</sup>, but a Bill for absolving the members of the court-martial from secrecy was immediately passed by the Commons by a large majority.

In the Lords, however, wiser and more prudent counsels prevailed, and by the influence and advice of Lord Hardwicke, supported by Lord Mansfield and by the great body of the peers, measures were taken calculated to put an end to these erratic and hysterical proceedings, and better adapted to secure the ends of justice and satisfy public opinion. By his direction every member of the court-martial appeared separately on March 2, at the Bar of

<sup>1</sup> *Bedford Corresp.* ii. 238.

<sup>2</sup> Voltaire's witticism that Byng was shot "pour encourager les autres" is well known. The letters are printed in Barrow's *Life of Anson*, 275. According to Col. J. Y., Voltaire's "stupid step displeased everybody and seemed calculated to do the prisoner more harm than good." H. 40, f. 230.

<sup>3</sup> "Home said to the Admiral that, knowing what he knew by conversing with him at Leith, he was very much surprised when he recommended Byng to mercy. 'You should have known, John, that I could never all my life bear the idea of being accessory to blood.'" *Autobiog. of A. Carlyle*, 307, 371.

<sup>4</sup> Walpole endeavours to explain their refusal by their fear of Lord Hardwicke and Lord Anson, and the risk to their future promotion, and writes confusedly, "a fact that I shall mention presently, when the father of the man whose power Geary [one of the two judges in question] dreaded [*i.e.* Lord Hardwicke], asked for a day of peculiar significance, will explain and cannot in the nature of things be disjoined from that sagacious captain's conception of what interests were concerned to impose silence on the Court Martial," a sentence which has not received the usual French polish. A little further on, however, he himself states that two of the three who demanded the Bill in the House of Commons received high promotion, but now this was the reward of their answers to the interrogatories in the House of Lords. *George II*, ii. 343, 367.

the House of Lords, when certain questions, drawn up by him, were put to each and answered on oath<sup>1</sup>. It soon appeared that ten out of the thirteen officers wished for no relief from their oath or any reopening of the proceedings, while the three others, including Captain Keppel who had started the whole, while desiring the Bill to be passed, swore on oath that they knew of no matter that passed previous to the sentence which might show the sentence to be unjust or given through any undue practice or motive. "Lord Hardwicke," writes Walpole, "authoritatively put an end to the debate; said the recital to the preamble [of the Bill] had been false; that they had sworn there had been no undue practice, and that it appeared upon what no grounds the House of Commons had proceeded, which he hoped would tend to ease the mind of his Majesty<sup>2</sup>." Lord Temple declared all his doubts removed, and congratulated the King and the nation upon the result. The Bill was then immediately rejected, and Admiral Byng was shot on the quarter-deck of the *Monarque* at Portsmouth, on March 14, 1757, terminating his unfortunate existence with decency and courage<sup>3</sup>.

<sup>1</sup> Walpole "paints" Lord Hardwicke as "a shrewd old lawyer, as weakly or audaciously betraying his own dark purposes in so solemn an assembly." *George II*, ii. 355. The following was the method of proceeding as drawn up by Lord Hardwicke in his handwriting:

- "1. The members of the Court Martial to be examined upon oath.
2. The members of the Court Martial to be called in and examined separately.
3. To begin with such of them as are under any immediate orders to sail.
4. The Clerk to be directed to take down the questions and answers in writing at the Bar.
5. The questions:
  1. Whether they know of any matter that passed previous to the sentence, to shew it to be unjust?
  2. Whether they know of any matter that may shew the sentence to have been given through, or by means of, any undue practice or motives?
 If *Yes* to either of these questions, then
  3. Whether they apprehend that they are restrained by their oath from disclosing any such matter?
  4. What kind of matters or things they apprehend they are restrained by their oath of secrecy from disclosing?"

H. 547, f. 48; and f. 58, for his notes of their answers to the questions. "Lord Hardwicke," continues Walpole (*George II*, ii. 366), "treated the House of Commons with the highest scorn." But the King himself was no less contemptuous, for in replying to Pitt, who urged the opinion of the House of Commons in favour of Byng's reprieve, he said: "You have taught me to look for the sense of my subjects in another place than in the House of Commons." (*Ib.* 331.)

<sup>2</sup> *George II*, ii. 366.

<sup>3</sup> The Lord Mayor declared his strong opposition to a petition to the King for mercy (N. 185, f. 260); "I am glad Byng's affair is at last over," writes Col. J. Yorke; "it is clear to me that mercy would easily have been procured, if a justification had not been sought for; and I see no colour for it after having read the trial. His dying speech is an

We can still echo Mrs Montagu's words on his subject—"I cannot think of him without some compassion; a criminal is not always an object of mercy, but frail man is ever an object of pity<sup>1</sup>."

The fate of the unhappy prisoner was no doubt principally decided by Lord Hardwicke's firmness, who had shown the same resolute opposition to the violation of legal rules and procedure, as he had formerly on the occasion of the attack upon the fallen Sir Robert Walpole<sup>2</sup>. As invariably happens in such cases, when popular and factious agitation finds itself at last unable to prevail against conscientious determination and fixed principle, his conduct was attacked with great violence and unscrupulousness. It was even said that he had laboured to accomplish Byng's destruction in order to shield the late ministry, and especially to defend his son-in-law, Lord Anson, who, as head of the Admiralty, had been chiefly responsible for the state and distribution of the Navy<sup>3</sup>. Such wicked and horrible calumnies can scarcely be thought worthy of serious refutation. But were it necessary to justify Lord Hardwicke's attitude on such low grounds, the charge of personal and factious motives is applied with far better reason to Pitt and his less distinguished followers, who were, there is no doubt, animated in their defence of Byng to a great extent by the desire to strike a blow at the government<sup>4</sup>.

ill-judged one and unworthy of a man in his last moment." H. 16, f. 198. "Would my Lord Hardwicke die thus," asks Walpole not very aptly, "even supposing he had nothing on his conscience?" *Letters*, iv. 42.

<sup>1</sup> *Correspondence* ed. by E. J. Climençon, ii. 90.

<sup>2</sup> See above, vol. i. 289 sqq.

<sup>3</sup> See Walpole above; Almon's *Anecdotes of Chatham*, i. 288; and Lord Shelburne, one of the Fox faction (*Life*, by Lord Fitzmaurice, i. 82, 90): "the admiral shot very unjustly, as everybody agreed, owing entirely to Lord Hardwicke, to turn the unpopularity from his son-in-law, Lord Anson." "Lord Hardwicke with great deliberation and sanctity sacrificed admiral Byng to be shot contrary to every rule of justice and to the best naval opinions, to stem the public clamour and save his son-in-law." It seems to have escaped the attention of these great politicians that to execute Byng was the very best way to draw popular odium upon the ministers and bring about a revolution of feeling in favour of the condemned man, which in fact actually took place. The Byng incident does not appear to have been treated by Mr Lecky with his usual clear judgment and insight; and in drawing up his narrative he is content with reproducing the insinuations and statements of writers all hostile to the ministers, Walpole, Waldegrave and Beatson. "Lord Hardwicke steadily laboured for his destruction," is not a fair or adequate description of his conduct and motives, and is obviously an echo of Walpole's "Hardwicke moved steadily towards his point, the death of the criminal" (*George II*, ii. 310); he also falls into the fundamental mistake of representing Byng's delinquency as "an error of judgment," instead of a neglect of duty.

<sup>4</sup> According to Lord Waldegrave, whose opinions, however, as the friend of Fox and Walpole, cannot be accepted without discrimination, "Pitt and Lord Temple were

The truth is that in matters where sober reason comes into conflict with emotion and sentiment, a difference of opinion is not uncommon or surprising. To hold even the scales of justice, to pass sentence of death upon a fellow-creature, requires a resolution and a firmness of spirits, together with an absolute disinterestedness and devotion to public duty which it is not given to every man to possess. These are qualities which are not generally prominent in excitable and irresponsible politicians, in parliamentary orators, in country demagogues and leaders of popular factions, and are probably only gained by long training, self-discipline and experience. It is therefore certain that a man of Lord Hardwicke's character, profession and standing, who had filled the highest legal and judicial offices for nearly 40 years, could not regard this matter with the same eye as the personal friends and relations of the unhappy prisoner, as the impulsive and interested Pitt, the mean and frivolous Horace Walpole, or the other hysterical and sentimental, or unscrupulous and intriguing individuals, who clamoured for his pardon. His experience as a judge, his knowledge as a statesman, told him that to allow a penal enactment to fade, on the first outburst of clamour, into a harmless threat, that to suffer the legislature to reopen a judicial verdict confirmed by all the twelve judges, merely for sentimental reasons, would have consequences far beyond the fate of one guilty officer, and would shake the foundations of the whole administration of justice and the whole maintenance of discipline in the services. But further than this, Lord Hardwicke was not only convinced of Byng's legal crime, but of his moral guilt. He had the best opportunities of reaching the truth, and a large collection of materials among his papers testifies to the care and thoroughness with which he investigated the case. No man in the kingdom had greater ability or experience in sifting evidence and in educing facts from a mass of tangled statements, and no man held a greater reputation for calm judgment and strict justice.

Now after the lapse of time, when the case may be regarded dispassionately, his judgment on the whole of this unhappy transaction is seen to have been a just one, and one not open

desirous to save him, partly to please Leicester House and partly because making him less criminal would throw greater blame on the late administration. But to avoid the odium of protecting a man who had been hanged in effigy in every town in England, they wanted the King to pardon him without their seeming to interfere." *Memoirs*, 91; cf. Glover's *Mem.* 116 sqq., and Lord Chesterfield, *Letters* (Bradshaw), 1165.

to the charge of harshness<sup>1</sup>. Byng's crime was not physical cowardice<sup>2</sup>, but the far more common moral weakness, the fear of responsibility, which is so fatal to men placed in situations demanding decisive action.

He had sailed animated by great personal ambition and by the desire to emulate his father, Lord Torrington's, great achievements, "having demanded the Mediterranean service as his right, and pressed for it as the scene of his father's glory," "full of his own glory and apprehensive of forfeiting any portion of what had descended on him<sup>3</sup>." Mixed with these aspirations was a profound sense of disappointment and discontent with the size of the fleet allotted to him for the moment, and on arriving at Gibraltar, alarmed at the magnitude of the task and the consequences to himself personally of possible failure, he had abandoned all hopes of success. "He dreaded forfeiting the reputation of 40 years of brave service"—to continue the quotation from his admirer and apologist, who does not see that he is here pronouncing his condemnation—"he looked on Minorca as lost and thought it could not be imputed to him. He had sagacity enough (without

<sup>1</sup> For the whole incident see *Parl. Hist.* xv. 803-822; H. 547, a collection of papers relating to Byng and Add. MSS. 31959; N. 185, f. 81; Tracts relating to Byng in the Brit. Mus.; *Trial of the Hon. Admiral Byng*, with appendix (1757); *Gent. Mag.* vols. xxvi., xxvii.; Beatson's *Naval and Military Memoirs*, where papers are printed; *Bedford Corresp.*, ii. 233, 238; Phillimore's *Memoirs of Lyttelton*, 584, 587; *Hist. MSS. Comm.* Rep. x. (1) 312; Walpole's account, which takes up a large space in his *Memoirs of George II.*, ii. 284-300, 305-12, 317-72, and *Letters* (1903), iv. 31, 35, 38, 41, has little weight, and the situation has been entirely misunderstood and misrepresented in Ruville's *Pitt* (1907), ii. 97 sqq.

<sup>2</sup> In the *Dict. of Nat. Biog.* Prof. Laughton seems to reflect upon Byng's conduct in former years, and see *Autobiography of A. Carlyle*, 307, where Admiral Smith, subsequently one of Byng's judges, is made to express an opinion of him as "a man who would shun fighting if it were possible." There seems, however, to be no good foundation for these aspersions which, if true, should have been given full weight when Byng was chosen to command the expedition, and can have little when raked up afterwards. Cf. Lord Lyttelton to his brother: "To what his abominable behaviour was owing it is hard to conceive; a sudden panic must have seized him, though he never was reckoned a coward before, or, as some people think, he must have been bribed by the French." (Phillimore, *Memoir of Lord Lyttelton*, 520.) Lord Royston, in a paper intended for a magazine article in defence of Lord Anson, while explaining the choice of Byng as the senior admiral in rank next to Lord Anson himself, says that Byng's character had never been impeached, and his courage had been "tried upon some private occasions." (H. 258, f. 213.) Elsewhere, "He [Anson] was fortunate in his choice of commanders except in that of Admiral Byng, and in him was only mistaken with the rest of his profession, for nobody ever suspected the capacity or courage of that unfortunate officer till the action off Mahon." (H. 80, f. 5.)

<sup>3</sup> Walpole, *George II.*, ii. 216, 298.

his strict orders) to comprehend that, if Gibraltar followed St Philip's, which he knew would be the case if he was defeated, that loss would be charged on him<sup>1</sup>." He resolved to remain inactive, and to throw all responsibility for ill consequences on the government. Hence his despondent letters written with the object of showing to the public the impossibility of his task, the long delay at Gibraltar, the sailing thence without reinforcements, the aimless and spiritless engagement with the enemy, the hopeless renunciation of all further attempts and the helpless return to Gibraltar.

The great crime of Byng, if we do not mistake, was that he could not identify entirely his own fame and glory with that of his country. Long lines of Englishmen had done this, some great and conspicuous figures, who by one stroke of magnificent self-devotion or genius had averted national peril or won victory, and whose deeds have been inscribed in their country's annals, but by far the greatest number those, whose humble names and devoted services have been long forgotten but whose animating spirit and example have been caught up by their successors, and who have handed down the torch of national life from one generation to another. Byng was not one of these. He had not this single-minded purpose but was pursuing two separate objects and the one, his own ambition and interest, overshadowed and obliterated the other, his duty to his country. There was here in fact, not only a neglect of duty but a real disaffection and a real treason with which modern

<sup>1</sup> *Ib.* 298. "From his knowledge of the people," writes Beatson (*Naval and Military Memoirs*, i. 468, 471) in 1804, the whole-hearted defender of Byng's cause, "he was certain they would now turn their eyes from the ministry to him; and without giving themselves leave to reflect on the smallness of the force with which he was to act, would expect that, at all events, he should entirely fulfil the design he was fitted out for; and if he failed in answering their most sanguine hopes, he was sensible that the public odium would be transferred from the ministry, who had long borne it, to him. But that the nation might in some measure be acquainted with his disagreeable situation, both as to equipment and the state in which he found things at Gibraltar, he wrote the following letter [May 4] to Mr Cleveland, Secretary to the Board of Admiralty. Did he not act properly in writing as he did? To let the world have a right state of matters, how much the national affairs had been neglected by the ministry...and...to convince the nation, if he failed of success, that the blame ought not to be laid to his charge?" It is singular that neither this writer nor Walpole, in the remarks already quoted in the text, perceived that they were giving away Byng's whole case. Cf. the Cardinal de Bernis (*Mém.* ii. 29) on the Duc de Richelieu's hesitation in pursuing and overwhelming the Duke of Cumberland's army at Stade, "Il ne voulait pas compromettre la gloire qu'il avait acquise à Minorque," and cf. also the advice sent to Admiral Vernon to "avoid an over zeal for your country's service" and "being drawn into any enterprise that may be hazardous," since failure to make progress would be imputed only to the ministers. See vol. i. 196.

sentiment, notwithstanding its morbid and exaggerated partiality for human weakness and failure, ought not to sympathise and which it would be highly dangerous for the State ever to pardon or to condone.

Meanwhile the acquisition of power by Pitt had been immediately followed by a notable diminution in the attacks and censures upon the late ministers, which seemed to show that their former violence and perhaps their present moderation, were not entirely disinterested or genuine. In an interview between Lord Hardwicke and Pitt on December 6, only a few days after the settlement of the new ministry, the latter, far from maintaining his former hostile attitude or repeating his accusations, disclaimed all "censures," and treated the coming enquiry in the House of Commons regarding the loss of Minorca slightly, as a matter of no importance, though one he could not by his former engagements, now obstruct. Pitt is now described by Walpole as promising his support to his Tory followers in pressing the inquiry, but fearing "he should not be able to speak five minutes for his cough," and in the debate on April 19 as acquiescing "in every softening term, proposed by the advocates of the late criminals; his justice shrunk behind apprehensions of personality; moderation was the sole virtue of the censor<sup>1</sup>." No investigation, in fact, was held during Pitt's term of power. In the event, "the Ministers after all their threats not pushing the inquiry," it was Fox, one of the incriminated ministers themselves, who moved for it to be taken up in committee of the whole House<sup>2</sup>. The publication of the whole text of Byng's letters, with his instructions and the evidence brought out at the court-martial, could not fail to produce on all impartial minds an effect favourable to the former ministers, and the latter still held a majority in the House of Commons. Accordingly, the examination into the causes of the disaster ordered subsequently by Parliament and not opposed by a single supporter of the late government<sup>3</sup>, was conducted in a more impartial atmosphere and with far less animus against the accused ministers than appeared likely a few weeks before, and the result justified still further their contentions and completed their vindication.

<sup>1</sup> p. 375; and Walpole, *George II*, iii. 4, 8-10. *Chatham Corr.* i. 216; but see further, p. 361.

<sup>2</sup> Dodington's *Diary*, 350, and Glover's *Memoirs*, 132, 138.

<sup>3</sup> Walpole, *George II*, ii. 305, who sees in this only a proof that all damaging evidence had been suppressed by the late ministers before leaving office.

Lord Hardwicke himself took the lead in organizing the defence and in marshalling the facts for the public examination. He had already given some assistance to David Mallet in the preparation of his pamphlet "Observations on the 12th Article of war," in the first part of which the author endeavoured to dissipate the false issues raised in Byng's defence<sup>1</sup>. By his direction now, an elaborate summary of the information received by the government, relating first to the preparations intended against Minorca, and secondly to those against Great Britain in the same periods of time, was drawn up, together with statements of the strength of the navy at the same periods, the several duties upon which the fleet was engaged and the exact circumstances in which Byng's expedition was fitted out, with the object of demonstrating the two main points, that consistently with the probable safety of Great Britain, the squadron could not have been dispatched either sooner or stronger. The general course of events from the beginning of 1755 was here recapitulated and the policy of the admiralty explained and defended,—the retention of a large fleet near home for fear of invasion; the unlucky issue of Boscawen's expedition to America, his capture of only three ships; the safe return of the French and the delayed return of Boscawen himself, leaving twelve ships at Halifax till May 1756, together with the deplorable state of his ships and of his men, of whom he had buried 2000, before his arrival<sup>2</sup>; the critical situation in the autumn of 1755 when so many British ships were abroad and the French had returned safely to port, while large bodies of French were gathered on their side of the Channel, and the English forces, which could take the field, though increased by all legal means, were not more than 13,000 foot and 4000 dragoons, exclusive of those in garrison and in training; the great demands made upon the navy of which the number of ships then available amounted to no more than 84, the necessity of watching the movements of the French fleet at Brest and Rochefort and of defending the American colonies and British commerce; the impossibility of allotting more than ten ships to Byng for the Mediterranean before the real objective of the French plans was disclosed; and lastly the peculiar disadvantage of the present situation which left France free to engage her whole strength in the attack upon Great Britain; whereas, in former wars, England had been supported by continental alliances which

<sup>1</sup> Below, pp. 353-4.

<sup>2</sup> Cf. Lord Waldegrave's *Memoirs*, 56.



kept France engaged, and maintained a large army in Flanders within call in case of an emergency<sup>1</sup>. A series of declarations for the Committee of the House of Commons in defence of the government and admiralty in Charles Yorke's handwriting, and with corrections and suggestions by his Father, form the general foundation of the actual resolutions which eventually passed the legislature<sup>2</sup>. Lord Hardwicke's two eldest sons aided the cause with their pens and their support in the House of Commons. Lord Royston defended Lord Anson, for whom he had a deep affection and respect, in the press<sup>3</sup>, and with Hume Campbell was a manager for his party in the enquiry in the Commons, in which capacity, as even Horace Walpole allows, he "acted with spirit and sense<sup>4</sup>." He moved the second resolution certifying the reception by the government of intelligence relating to the invasion and assembling of troops on the French coast<sup>5</sup>, while Charles, now Solicitor-General, aided by his father's instructions, took also a leading part in the Commons in defence of the late government and seconded the thirteenth resolution, affirming the despatch on March 28 of the order to send a battalion of men from Gibraltar to Minorca<sup>6</sup>.

During the debates on the enquiry, which had begun on April 19, Pitt had at last, urged on by his supporters, worked himself up to pronounce some invectives against the late ministers, and especially Lord Anson<sup>7</sup>. But on May 3, the resolutions of the Committee, which were reported and agreed to by the House of Commons, were decisively in their favour. After certifying the facts of the concurrent intelligence received by the government of the preparations on the French coast for an invasion, and of those for an attack upon Minorca, and of the naval resources and dispositions, they concluded as follows: "It doth appear that no greater number of ships of war could be sent into the Mediterranean than were sent on the 6th of April, 1756, nor any greater reinforcement than the regiment which was sent, and the detachment equal to a battalion which was ordered to the relief of Fort St Philip's,

<sup>1</sup> pp. 355-7 and the statement, H. 547, ff. 123-350, with corrections by Charles Yorke, transcribed in Add. MSS. 31959.

<sup>2</sup> H. 547, ff. 72 sqq.

<sup>3</sup> H. 258, ff. 213, 250, and H. 28, f. 136.

<sup>4</sup> *George II*, iii. 7.

<sup>5</sup> H. 547, ff. 92, 96; *Parl. Hist.* xv. 822-7.

<sup>6</sup> H. 547, ff. 376-388, where are rough notes of his speeches.

<sup>7</sup> Glover's *Memoirs*, 137, and Lord Royston to Lord Hardwicke: "Mr Pitt's speech last night [May 2] was severe, and he extended his indulgence to the errors of ministers, not with the most gentle hand." H. 3, f. 370.

consistently with the state of the navy and the various services essential to the safety of his Majesty's dominions and the interest of his subjects<sup>1</sup>."

Many years afterwards the conduct of the government and of Lord Anson was publicly vindicated in a still more striking manner, and by no less a person than Lord Chatham. Speaking in the House of Lords on November 22, 1770, in a debate upon the seizure of the Falkland Islands by the Spanish, he said: "Consult the returns which were laid before Parliament in the year 1756. I was one of those who urged a parliamentary enquiry into the conduct of the ministry. That ministry, my Lords, in the midst of universal censure and reproach, had honour and virtue enough to promote the enquiry themselves. They scorned to evade it by the mean expedient of putting a previous question. Upon the strictest enquiry it appeared that the diligence they had used in sending a squadron to the Mediterranean and in other naval preparations was beyond example." Alluding to Lord Anson he declared, "the merits of that great man are not so universally known, nor his memory so warmly respected as he deserved. To his wisdom, to his experience and care, (and I speak it with pleasure), the nation owes the glorious naval successes of the last war. The state of facts laid before Parliament in the year 1756, so entirely convinced me of the injustice done to his character that, in spite of the popular clamours raised against him, in direct opposition to the complaints of the merchants and of the whole city...I replaced him at the

<sup>1</sup> *Parl. Hist.* xv. 827; below, p. 358; Walpole's *George II*, iii. 7-11; *Letters*, iv. 47, 50. The result was naturally extremely displeasing and disappointing to this writer, who declares the enquiry a farce and "a pantomime from which nothing was intended, expected or produced," and criticises severely, but apparently on no good foundation, the methods of preparing the evidence and conducting the examination. "The Tories are to affirm that the ministers were very negligent, the Whigs that they were wonderfully informed, discreet, provident and active, and Mr Pitt and his friends are to affect great zeal for justice, are to avoid provoking the Duke of Newcastle, and are to endeavour to extract from all the nothings they have not heard, something that is to lay all the guilt at Mr Fox's door." See also H. 547, f. 73, where Lord Hardwicke adds a note to the rough draft of the resolution in Charles Yorke's handwriting, expressing his entire concurrence with the statement, but doubting whether so much would be accepted by the House of Commons, and suggesting instead the words "that there were reasonable grounds to judge that the said squadron was the greatest force," etc. The disposition of the House, however, was to be awaited. Also H. 529, ff. 357-66, account of the debates in various hands, some in Lord Royston's. The new Attorney-General, Sir Robert Henley, having examined into the matter, "was ready to say that the late government had, all circumstances considered, done everything that a wise and prudent administration could have done." Pitt declared that he had never called the government a corrupt, but a weak one. If wise measures had been taken, Minorca would never have been lost. He desired the printing of the evidence.

head of the Admiralty; and I thank God I had resolution enough to do so<sup>1</sup>."

How little Lord Anson was in fact indebted to Pitt for his restoration to office will appear in the following chapters. Moreover, the objects of these encomiums had then been long in their graves, after having borne the unjust weight of popular reproach for many years, unaided by such eloquent testimonies to their merits; and not only their reputation but that of the orator himself would have been enhanced by a more timely recognition of their good services, and by one not delayed till their conduct presented a convenient point and theme for attack and invective upon another administration<sup>2</sup>.

## CORRESPONDENCE

[On October 9, 1756 (H. 246, f. 254), the Chancellor writes to David Mallet<sup>3</sup>, proposing some alterations in his pamphlet in defence of the government, and adds:]

It may be proper to justify the leaving out the passages in Mr Byng's letter published in the *Gazette*. The first passage as immaterial and the fact now clearly contradicted by Mr Boyd's account of his going out of the harbour at that time<sup>4</sup>.

The 2nd and 3rd as improper to be published to all the world.

The 4th omitted out of tenderness to Mr Byng by reason of the absurdity of his affirming that the French sailed three feet to our one<sup>5</sup>.

As to the 5th, the reinforcement was ordered before.

<sup>1</sup> *Parl. Hist.* xvi. 1099-1101.

<sup>2</sup> Cf. in this connection Pitt's belated encomium of Sir R. Walpole, which forms an exact parallel, above vol. i. 98, 189.

<sup>3</sup> David Mallet (c. 1705-1765), poet, dramatist and political writer, formerly under-secretary to the Prince of Wales. He published in 1757 *Observations on the 12th Article of War*, to which the correspondence no doubt refers. In the first part he endeavoured to clear up the confusion in the public mind between *neglect of duty* and *error of judgment*.

<sup>4</sup> *I.e.* of May 25, p. 291. The first passage omitted contained details of the failure to communicate with the besieged garrison; while the existence of the difficulties enumerated was contradicted by the evidence of Robert Boyd (1710-1794), the store-keeper at Port Mahon (see further, p. 355). Boyd made an unsuccessful attempt in an open boat to carry despatches to Byng on May 19. He was promoted colonel, was made Lieutenant-Governor of Gibraltar in 1768, and was second in command during the famous siege 1779-83, when he was made K.B. for his distinguished services; Governor 1790, and died 1794.

<sup>5</sup> This extraordinary statement, however, occurs also in an earlier paragraph of Byng's letter, which is included in the published extract.

As to leaving out the words *cover Gibraltar*, the contradiction and absurdity of supposing Gibraltar in any danger when he says he had gained the victory.

*Lord Chancellor to Lord Anson*

[H. 246, f. 254.]

WIMPOLE, Oct. 10, 1756<sup>1</sup>.

MY DEAR LORD,

I take the opportunity of the Marquis of Rockingham's doing me the honour of a visit, to return (by his servant) to Mr Cleveland<sup>2</sup> the manuscript of Mr Mallet's pamphlet. I have read it quite through and upon the whole cannot find much fault with it, though, I must own, I am not much enamoured with it. But this *entre nous*, for authors of this kind must not be discouraged by too much criticism. However, I have ventured to put down in the enclosed sheet of paper some remarks and queries which I desire your Lordship will take the trouble to peruse and to consider whether you think any of them improper, especially in what relates to maritime affairs and dispositions. Whatever you shall disapprove in this paper of mine, I desire you will strike out and then deliver it to Mr Cleveland, with my request to him to copy it over fair, and forthwith send such copy to Mr Mallet, keeping my original. My reason (which I will tell your Lordship) for taking this method is that I am not fond of giving a handle to be named as a joint author with this gentleman; but I have writ him a very civil letter wherein I have informed him that he will very soon receive such a paper from Mr Cleveland. I have also modestly suggested to him to add something further, by way of observation and argument, upon the points of conduct chiefly objected to, for in that part I suspect the performance to be chiefly deficient....

Ever yours,

HARDWICKE.

*Duke of Newcastle to the Earl of Hardwicke*

[N. 184, f. 249.]

NEWCASTLE HOUSE, Dec. 5, 1756.

MY DEAR LORD,

My Lord Barrington is now with me and has acquainted me with a circumstance which is most material that your Lordship should know, and I think tends to clear up the point about the loss

<sup>1</sup> Printed in Sir J. Barrow's *Life of Anson*, 262.

<sup>2</sup> Secretary to the Admiralty.

of Minorca and to justify all that was done *here* more than any one which I have yet heard. General Blakeney assured my Lord Barrington; first, that the communication was open and that they might have flung in succours at any time, even in day time whilst he was master of St Philip's; secondly, that he surrendered the place because his garrison was worn out with continual duty; thirdly, that had our fleet been successful and the reinforcement been flung in, Marshal Richelieu and his army must have capitulated<sup>1</sup>....

*Earl of Hardwicke to the Duke of Newcastle*

[N. 184, f. 253.]

POWIS HOUSE, Dec. 6, 1756. Monday night.

MY DEAR LORD,

I return your Grace my thanks for the information contained in the letter with which you honoured me yesterday. It is very material and I have communicated it to my Lord Anson, who will make the best use of it he can in his present private situation. I have gone a little further, and as Lord Barrington called upon me last night<sup>2</sup>, I desired his Lordship to give a hint to Sir John Ligonier that General Blakeney should be very particularly examined before the general officers upon those points, and that they should take care to have his examination very correctly taken down, and inserted in the report to be made by the general officers to the King; that his Majesty should be advised to order a copy of that report to be transmitted to the Admiralty, and they be ordered to summon General Blakeney to attend as a witness upon Mr Byng's trial. This will be a regular method of proceeding....

*Earl of Hardwicke to Philip Carteret Webb*

[H. 247, f. 2.]

MOOR PARK, Jan. 2, 1757.

DEAR WEBB<sup>3</sup>,...

As I have this opportunity of Lord Royston's return to London, I will tell you the plan, whereon I wish you would set

<sup>1</sup> See Blakeney's evidence at the court-martial; above, p. 270 n.

<sup>2</sup> William, second Viscount Barrington in the peerage of Ireland; M.P. for Plymouth, Secretary at War.

<sup>3</sup> Philip Carteret Webb (1700-1770), solicitor, F.R.S. and F.S.A., M.P. for Haslemere, well-known as an authority on constitutional law and for his collection of MSS., had rendered valuable services to the government on the trials of the prisoners in 1745, and in defence of the Jew Bill of 1753; he was made Secretary of Bankrupts in the Court of Chancery by Lord Hardwicke, and in December 1756 joint solicitor to the Treasury. He was afterwards, in 1763, conspicuous on the side of the government in the prosecution of Wilkes, and in consequence was tried for perjury, and much persecuted.

out, in as few words as I can. You have seen Mr Cleveland and Mr Stevens<sup>1</sup>, and therefore must be possessed of the general idea of the affair and have many of the papers already in your hands. This enables you to see that they are a confused mass, consisting of various subjects mixed together and in want of being distinguished and brought into order, without which none but adepts in admiralty affairs can extract any lights from them.

The two main points to be proved are—

1. That consistently with the *probable safety of this country*, a squadron could not have been sent *sooner* to the Mediterranean.

2. That consistently with the *probable safety of this country*, that squadron could not have been made *stronger* when it was sent.

In order to support these two points I would have the materials, which lie in these voluminous letters and papers, *extracted* upon this plan,—

1. To reduce the intelligence concerning the French preparations at Toulon and concerning their design against Minorca, to *certain periods of time*, either *by weeks, fortnights* or *any other given periods*, as shall appear most convenient.

2ndly To reduce the intelligence concerning *an invasion* intended against Great Britain or Ireland, and the French preparations towards it, *to the same periods of time*, and to set the one intelligence against the other.

To shew the *variations* of the *intelligence on this head*.

This part I think will be pretty easy, but the more difficult task will be what follows,—

1. To shew the *condition* of our Fleet at *those several periods of time*.

2ndly To shew *the numbers of seamen* and the state of the manning of the *ships at the same periods*.

3rdly To state the several *services*, on which our ships were employed or destined to be employed *at those periods*, and the *necessity* or *utility* of those services.

4thly To shew when the fitting out of Admiral Byng's squadron *was set about*, and *why not set about sooner*.

And my notion is that both parts of this detail should be done by way of *extracts* from the several letters and papers, as near as possible, *in hæc verba*.

<sup>1</sup> No doubt Philip, afterwards Sir Philip Stephens (1725–1809), Lord Anson's secretary and later Secretary to the Admiralty.

To these two points I would have a *third* general head added, viz ;—To shew that Admiral Byng's squadron, including the ships under Commodore Edgcumbe, which were always intended to make part of it, was *rather superior* to Mon<sup>r</sup> de la Galissonnière's, or any other French squadron with which *he was likely to meet*.

This is my general idea, which I know you will improve, and it will be sufficient for you to work upon till I have an opportunity of conferring with you.

Lord Anson desires me to return you his best compliments and thanks for being so good as to undertake this necessary trouble.... I am with great truth, dear Webb,

your most faithful, humble servant,

HARDWICKE.

*Earl of Hardwicke to Lord Anson*

[Add. 15956, f. 27.]

Jan. 26, 1757.

[Richelieu's letter to Byng was evidently an extract of a longer letter and one that was solicited. Mr Webb had finished the papers according to the above plan.] I spent last night from 9 o'clock till 12 with him in reading them over from beginning to end, and think they are extremely well done. They are unavoidably pretty long but they shew the several intelligences and facts in a clear light, being divided methodically and applied to the different questions; so that they appear to me to make a complete justification. I am convinced we are much better prepared for the *defence* than the other side are for the *enquiry*. [The papers must be finally read over to Lord Anson and settled.] After that it must be considered into whose hands copies of these papers should be put, for they ought not to be spread and divulged too early, because that would be *shewing our hand at Whist*. [He believes the opinions and accounts of Galissonnière and of the French general on comparison will be found not to quite agree.]

[He writes again on January 29, 1757 (f. 29), on the same subject.] Do not be sparing in laying any commands upon me, for this is a common cause, tho' it would be sufficient for me, if it were only yours<sup>1</sup>.

<sup>1</sup> Also ff. 31 and 34.

*Earl of Hardwicke to the Solicitor-General*

[H. 5, f. 212.]

POWIS HOUSE, Feb. 23rd, [1757].

DEAR CHARLES,

An idea has struck my mind relating to the alteration talked of in the 12th art., which may not be unpalatable in the House of Commons. One, if not the only alteration proposed, will be to restore the alternative—or *such other punishment as a court martial shall think fit*.

My objection is that this was found, by experience, to be in effect vesting the court-martial with a power of pardoning; for they thought they satisfied the law, if they inflicted any punishment, and made it so slight, as almost to amount to none. The alteration made by the new act was to vest that power of pardoning in the Crown, where it ought to be. Not intending that every man, who came within the words of the new article, should *actually* suffer death; but that every man who was found guilty of an offence, which might be of such vast importance to the whole nation, should know that they were liable *to death*, and that it was not in the power of half a dozen or half a score of their brother officers to excuse them from it; but still leaving it in the power of the King, properly advised by his council, to execute justice in mercy, according to his coronation oath.

If there is anything in this thought, you will improve it...

Yours affectionately,

H.

*Solicitor-General to the Earl of Hardwicke*

[H. 5, f. 218. Endorsed in Lord Hardwicke's handwriting.]

BLOOMSBURY SQUARE, May 3rd, 1757,  
in the morning, from Mr Solicitor;  
Enquiry, last day in the Committee.

MY LORD,

Mr Townshend moved in the Committee a resolution as to the squadron under Commodore Edgcumbe and the garrison of Minorca and added negative words to it—that *no* greater force, etc. had been sent till 6 April, 1756. Mr Ellis moved an amendment, to leave out the latter part, and to insert—that it appears to the Committee that no greater number of ships of war than etc. nor of troops than etc. *could* be sent, consistently with the state of the navy and the various services, etc. The debate turned till after 8 o'clock on the form of proceeding, whether to



separate the different parts of the question; and whether it was necessary to call for the returns of the army, that they might lie upon the Table, as a foundation for the opinion of the Committee upon the military part.

The Committee was so tired, that few spoke upon the main question when we came to it; Nugent, Lord Granby, Lord Barrington, Dodington on our side; G. Townshend, Martin, Mr Grenville, and Mr Pitt on the other. We divided between 12 and one o'clock on the words proposed to be left out of the question.

Ayes 134 that those words should stand in the question.

Noes 212.

Then Mr Townshend moved, that it is the opinion of the Committee that the *not sending*, etc. was a principal cause of the loss of Mahon; on which we divided immediately—Ayes 127,

Noes 210.

The Report will be received today.

I am, etc.

C. YORKE<sup>1</sup>.

<sup>1</sup> Another letter from Lord Royston on the enquiry, April 29, H. 4, f. 220.

## CHAPTER XXV

### THE INTERREGNUM

THE trial of Byng and the result of the Parliamentary enquiry had supplied a complete defence of the disposition and employment of the national armaments made by the late government, and the next series of events was destined to provide a full justification of its foreign policy, at first attacked and censured, but now adopted and approved by the new minister.

The accession of Pitt to office at first seemed an extraordinary personal triumph over all the forces and individuals that had hitherto opposed him. He had secured the supreme power, and overcome all rivals and all obstacles; and supported only by a small following in Parliament, by a larger one in the country and by Leicester House in the background, he had forced his way into office in the face of the determined hostility and opposition of the Sovereign. He had contemptuously, in the tones of a dictator, refused all collaboration with the Duke of Newcastle or with Fox<sup>1</sup>, declared it to be his intention to stand alone, assumed an attitude of "splendid isolation," and turned a deaf ear to Lord Hardwicke's prudent counsels of moderation, conciliation and compromise. "Mr Pitt is arrogant," wrote the disappointed Fox, "and I think dishonest, if not mad, to take the whole upon him<sup>2</sup>."

Pitt's victory, indeed, was soon seen to be scarcely more than nominal, and his power to rest on no substantial foundation; and he had early reason to regret his rejection of Lord Hardwicke's advice and proposals. The internal weakness and disunion of the new government were disclosed at its first setting out, when a clause, admitted into the reply of the Lords to the King's speech by the Duke of Devonshire, expressing thanks to the King for the Hanoverian troops, was violently attacked by Lord Temple, a leading

<sup>1</sup> Lord Shelburne's *Life*, i. 172.

<sup>2</sup> *Hist. MSS. Comm.*, Stopford-Sackville, i. 51.

member of the Cabinet<sup>1</sup>. Indeed, the composition of the new ministry including, with Pitt's followers, Lord Holderness and Lord Barrington, and other adherents of the old administration<sup>2</sup>, and with the Duke of Devonshire at its head, the intimate friend of Fox, offered little prospect of stability, while the Duke of Newcastle's party gained strength by its temporary exclusion from office. Writing on December 6, 1756, to Col. Joseph Yorke at the Hague, the Duke tells him that he finds he has lost very few friends by his resignation of office, and that he has been well defended in the House of Commons<sup>3</sup>. "The Duke of Newcastle," wrote Lord Lyttelton, "has been more visited and had greater professions of attachment made to him than when at the head of the Treasury<sup>4</sup>." "His antechamber," wrote Lord Barrington, "is every day fuller than ever; the foreign ministers come regularly on a Wednesday as usual. I see no alteration at Newcastle House except that its master is more cheerful<sup>5</sup>."

Pitt soon found it necessary to quit his attitude of arrogant independence, and to seek the support or neutrality of those whose collaboration a few weeks before he had scornfully declined. Their policy and plans, which had been so vehemently assailed in opposition, were now in office, without any scruple or hesitation, approved and appropriated. "They only desired to create as much confusion as might be necessary to bring themselves into power," writes Lord Waldegrave of Pitt and his party, not without some justification, "which being obtained, they were ready to talk a different language, to say that the object was changed, and to pursue the same political system which had ruined the former administration<sup>6</sup>." Byng, formerly the victim and scapegoat of official guilt and negligence, was not preserved from his fate. The late ministers were not called to account for the loss of Minorca. The matter was not brought up for examination during Pitt's tenure of power, and it was left to Fox, one of their number, to move subsequently for the enquiry in their own justification<sup>7</sup>. Writing on January 20, 1757, to the

<sup>1</sup> p. 375. *Grenville Papers*, i. 182, 184; Glover's *Memoirs*, 102; Waldegrave's *Memoirs*, 89.

<sup>2</sup> For Lord Holderness's explanation of his situation, see Add. MSS. 6832.

<sup>3</sup> N. 184, f. 260.

<sup>4</sup> Phillimore, *Memoirs of Lord Lyttelton*, 535; Walpole, *George II*, ii. 275, 284; *Letters*, iv. 12; *Bedford Corresp.* ii. 207; Glover's *Mem.* 101.

<sup>5</sup> Add. 6834, f. 8.

<sup>6</sup> *Memoirs*, 62.

<sup>7</sup> See pp. 349, 376, 383; the formal demand for papers by George Townshend on February 8, 1757, led to nothing. Walpole's *George II*, ii. 305, 379-380.

Duke of Bedford, Richard Rigby, one of the Fox faction, reports that the motion for the enquiry had been laid aside, that "the language of the Tories is to drop all thoughts of it lest it should hamper their new friends, the new administration, in difficulties that might force them to quit. This is being steady to them indeed, but what is to become of their addresses and instructions, and, above all, their popularity, under this acquiescence, I cannot guess<sup>1</sup>." "Some papers have been moved for," wrote Walpole on February 13, "but so coldly, that it is plain George Townshend and the Tories are unwilling to push researches that must necessarily re-unite Newcastle and Fox<sup>2</sup>." The King's Speech, composed now for the first time for a generation, not by Lord Hardwicke, but by Pitt himself, contained a clause recommending a "national militia planned and regulated with equal regard to the just rights of my Crown and people," as "one good resource in case of general danger"; and announced the return home of the foreign troops, the King "relying with pleasure on the spirit and zeal of my people in defence of my person and realm<sup>3</sup>." The militia, however, of which so much had been heard, was quietly neglected by Pitt, and the Act for its establishment was not passed till after his removal from office<sup>4</sup>. "The measures, as declared and explained by Mr Pitt," wrote Lord Barrington, "differ in nothing from those of the last administration. Every effort in America, consistent with our safety at home, every effort at sea, and whatever this country can do besides, given to the support of our allies on the continent. I am told the Admiralty change nothing in what they find to have been Lord Anson's plan<sup>5</sup>." "There is certainly enough of Germany in it (the Speech)," writes Lord Lyttelton, "and it by no means agrees with the public declarations made by Lord Temple of no *foreign subsidies*, much less with the language talked the last year<sup>6</sup>." "I don't like Pitt," the King had said to the Duke of Newcastle in October 1756: "he won't do my German business<sup>7</sup>." Lord Hardwicke had

<sup>1</sup> *Bedford Corresp.* ii. 223; Glover's *Memoirs*, 107.

<sup>2</sup> *Letters*, iv. 35; *George II*, ii. 305.

<sup>3</sup> The speech received Lord Hardwicke's compliments; according to Walpole, Pitt had at first composed a long oration which the King refused even to read, and sent back to Pitt to shorten. A spurious speech, which the King declared that he liked better than his own, was published, for which the printers were punished by the Lords. *George II*, ii. 276; Waldegrave's *Memoirs*, 89.

<sup>4</sup> *Ruville's Pitt* (1907), ii. 96; Glover's *Mem.* 113, 124.

<sup>5</sup> Add. 6834, f. 8.

<sup>6</sup> Phillimore's *Memoirs of Lord Lyttelton*, 543.

<sup>7</sup> p. 321. See also Walpole's *George II*, ii. 254.

understood Pitt's disposition and views much better. So had also Lord Waldegrave, who represented Pitt's character to the King, with considerable truth, though with excessive hostility and severity. "I was not ignorant that Pitt could be guilty of the worst of actions whenever his ambition, his pride or his resentment were to be gratified, but that he could also be sensible of good treatment; was bold and resolute, above doing things by halves; and if he once engaged would go farther than any man in this country. Nor would his former violence against Hanover be any kind of obstacle, as he had given frequent proofs that he could change sides, whenever he found it necessary, and could deny his own words with an unembarrassed countenance<sup>1</sup>." The King's Hanoverian partialities, accordingly, were no longer held up to ridicule or abuse, but calmly acquiesced in. The denunciations of Hanover were no longer heard, and the project of leaving the Electorate to its fate quietly abandoned. The curses pronounced upon the continental policy of the late Government were suddenly changed to blessings. The German measures of last year, declared by Pitt to be a millstone about the neck of ministers, turned out after all, in Fox's sarcastic phrase, to be "an ornament." The alliance with the King of Prussia, formerly one that Pitt would not have signed, for all the offices of the Cabinet together<sup>2</sup>, was now openly supported and approved. The great person called to power by the mighty voice of an indignant nation to redress the mistakes of the late administration, to free the country from the influence of Hanover, the entanglement of continental politics and the burden of continental subsidies, signalised his first appearance in the capacity of responsible minister in the House of Commons on February 17, 1757, by laying before the House a demand for £200,000 for the defence of Hanover, and to enable the King to fulfil his engagements with the King of Prussia; and the money was voted without a single sign of opposition<sup>3</sup>. Subsequently, Pitt received the thanks of Frederick, who rejoiced at the unexpected support of the new minister; and Pitt replied by expressing his "most grateful sentiments and veneration and zeal for a Prince who stands the unshaken bulwark of Europe<sup>4</sup>." According to

<sup>1</sup> *Mem.* 131.

<sup>2</sup> Above, pp. 275, 291.

<sup>3</sup> p. 385. *Parl. Hist.* xv. 782; Glover's *Mem.* 112; Ruville's *Life of Pitt* (1907), ii. 89; Walpole's *George II*, ii. 264, 313; R. Phillimore's *Memoirs of Lyttelton*, 543, who writes "[Pitt] spoke like a minister and unsaid almost all he had said in opposition."

<sup>4</sup> *Chatham Corresp.* i. 224-7.

Wiedmarckter, the Saxon ambassador in London, moreover, Pitt gave assurances to King George of considerable supplies for Germany, in addition to the present sum, which was represented as only a first step, taken prudently, in order not to alarm Parliament<sup>1</sup>.

Pitt's personal demeanour also towards the King underwent a complete transformation as surprising as the change in his political attitude; and he who had formerly startled the world by cruel and insulting personal reflections upon the Sovereign, now surprised all by his perfect decorum as a courtier, surpassing all in the obsequiousness of his manner, and at the Levée, as was afterwards said of him, bowing so low "You could see the tip of his hooked nose between his legs<sup>2</sup>."

No doubt the desire of maintaining his power was one motive in Pitt's conversion to the Newcastle policy and to the King's wishes, just as the desire to secure that power had been a motive in his former opposition. But the chief cause of his extraordinary change of attitude, and of his fortunate inconsistency, was certainly the conviction of the necessity and wisdom of the policy itself, and of the impossibility, in a general war with France, of excluding Hanover and the Continent entirely from the sphere of operations.

All these surrenders, compromises and accommodations, however, could not support him long in power. The known weakness of his position, supported only by a handful of friends and a small body of the Tories, together with the strength of his opponents, exposed him to attacks, which in other circumstances would not have been attempted, and kept active the King's dislike by the hopes of soon supplanting him. "If the Duke of Newcastle," writes Lord Lyttelton, "would have joined Fox, Pitt and Company might have been safely turned out before Christmas, or any day throughout the session; for the majority was plainly against them, and they carried questions only by the Duke of Newcastle's assistance<sup>3</sup>. Pitt's oratorical harangues were ill received by the King, who, a man of plain intelligence and insensible to the ornaments of eloquence, liked to dispatch business quickly and without formality; while to Lord Temple the King had an invincible antipathy. He declared him to be "so disagreeable a fellow there was no bearing him,"

<sup>1</sup> Ruville's *Pitt*, ii. 93 n. (1); also N. 185, f. 23.

<sup>2</sup> Lecky's *Hist. of the 18th Century*, ii. 484.

<sup>3</sup> Phillimore, *Memoirs of Lyttelton*, 597.

"pert," "insolent," and "troublesome," and "in the business of his office totally ignorant<sup>1</sup>." Lord Temple had opposed with great acrimony, at the very outset of the career of the new ministry, the thanks of the Lords to the King for the Hanoverian troops. In the Byng affair, he had used some insolent expressions to the King, in imitation of Pitt's opposition manner, which Walpole declares to have been—though it is impossible to credit the story—an invidious comparison between the King's own conduct at Oudenarde and that of the disgraced admiral. A more credible version is given by Richard Rigby, according to whom it would appear that an attempt was made to bully and intimidate the old King. He reports that on the King's determined refusal of the pardon, Lord Temple "walked up to his nose and *sans autre cérémonie* said, 'What shall you think if he dies courageously?' His Majesty stifled his anger and made him no reply. I think I have never heard of such insolence<sup>2</sup>." "Lord Temple's behaviour to the King in his closet," wrote Lord Lyttelton, "gave so much offence that His Majesty declared he had never been so treated by any servant or subject since his accession, and that he would rather give his crown to my Lord than live with him another month<sup>3</sup>." He sent Lord Waldegrave to the Duke of Newcastle to encourage him to come once more to his aid and form another administration, and to tell him that he "did not look upon himself as King whilst he was in the hands of these scoundrels." Once more, prompted by Fox, the baneful influence of the Duke of Cumberland, who had already obstructed Pitt's military measures, as he had those of the old ministers<sup>4</sup>, was employed in excluding Pitt from office. Chosen to command the German troops, which had been taken into British pay for the defence of Hanover, he refused to take up his command, unless Pitt were removed: and the King, glad of an excuse, dismissed Pitt on April 6, Lord Temple and his friends accompanying him into retirement, while the Duke of Devonshire remained the head of a nominal administration, in which the chief offices were vacant<sup>5</sup>.

Such a situation, in the midst of a great war, at the moment when the French armies were actually preparing to invade Germany and Hanover, was one of extreme national peril. The King's

<sup>1</sup> Waldegrave's *Memoirs*, 95.

<sup>2</sup> *Bedford Corres.* ii. 238.

<sup>3</sup> Phillimore, *Mem. of Lyttelton*, 596.

<sup>4</sup> pp. 380, 387, 390.

<sup>5</sup> Walpole, *George II.* ii. 376, iii. 1 sqq.; *Letters*, iv. 43; Waldegrave's *Mem.* 90-107; Dodington's *Diary*, 348; below, p. 394; *Stowe MSS.* 263, ff. 4 sqq.

inclination, as usual, backed by the Duke of Cumberland, turned once more towards Fox, who, soon after Pitt's admission to office, had assured the King of his readiness to support his affairs<sup>1</sup>. Lord Hardwicke, on the contrary, notwithstanding obvious difficulties and the failure of former attempts, was still strongly in favour of the junction with Pitt, with whom he had maintained good relations, and to whom he had given assurances of support. He was convinced, as he had been for twelve years, that a union of the forces of Pitt and of the Duke of Newcastle was the only plan of administration which could offer stability, uphold the national interests, carry on a great war and produce peace in the Royal Family, as well as gain the support of Leicester House and of the future King for the Government. He was now zealously supported in his views by the veteran Lord Chesterfield, who acted as a mediator between the Duke of Newcastle and the Princess of Wales, and represented strongly the impossibility of forming any administration of strength and permanence without Pitt and Leicester House. By Lord Hardwicke's influence a junction between the Duke of Newcastle and Fox was prevented; and the Duke was kept firm in his resolution, in spite of the King's moving entreaties and angry complaints, to decline an union with that politician<sup>2</sup>.

The prospects of securing Pitt, though not encouraging, were, however, not quite so unfavourable as formerly. Pitt had now, by experience, discovered his power not to be so overwhelming as he had supposed. He had found himself unable to stand alone. Though his strange and summary dismissal by the King had aroused a storm of indignation in the country, and increased his popularity, his credit and influence among his own party in Parliament had been somewhat weakened by the incidents of his tenure of office, while that of the Duke of Newcastle had been restored and increased: and it might be expected that the support of the latter would now be regarded with more consideration than formerly, and valued higher. At the beginning of April, Legge, one of Pitt's staunchest followers, had confessed to Lord Anson that "a great

<sup>1</sup> pp. 380, 384, 387.

<sup>2</sup> pp. 387-8; Phillimore, *Memoirs of Lyttelton*, 597; Walpole's *George II*, ii. 377, who writes: "Lord Mansfield had early gone to Claremont and endeavoured to fix him to Fox: but as that Lord himself told the latter, Newcastle was governed by Lord Hardwicke, even by a letter." "The Duke of Newcastle...would join with Fox; but the Chancellor, who hates him and is alarmed at his unpopularity and at the power of Pitt with the people, holds back...." *Letters*, iv. 51.



mistake had been committed in the winter by his party in not joining the Duke of Newcastle"; had given as its cause, "the visionary notions of Mr Pitt<sup>1</sup>," and had at the same time sought and obtained an interview with the Duke of Newcastle.

About the second week of May, according to Walpole, a meeting took place between Lord Hardwicke and Pitt; but Pitt refused to come in except on the condition of the cession of the whole power of the administration and the admittance into office of all his adherents. Further meetings, on May 24 and May 25, at the latter of which the Duke of Newcastle was also present, were equally fruitless on account of Pitt's exacting demands<sup>2</sup>, and Lord Hardwicke in despair withdrew from the negotiations<sup>3</sup>.

Various conferences and meetings followed between the claimants for power and chiefs of the contending factions, in which Lord Hardwicke took no part and which ended without result. The Duke of Newcastle, by the beginning of June, showed signs of yielding to the Royal persuasions, and of undertaking once more the government to fill the void, leaving the various offices to be assigned later. The King had said to him, "Well, my Lord, you must come in, we cannot do without you<sup>4</sup>." From this project, however, he was dissuaded by Lord Hardwicke, as settling nothing and as constituting a "purgatory," in which the Duke would expose himself to innumerable disadvantages. The Duke's resolution not to take office under these conditions was further strengthened by interviews with Bute and Pitt, which took place with the King's knowledge on the 4th and 6th of June. "I wish you may find them more reasonable than I expect it," wrote the King. "But I very much doubt by what I know of them that you will meet any reason with these impracticable people. If Pitt will come in with a great number of followers, it is impossible you can direct the administration, and I know that by inclination he will distress my affairs abroad which are so enough already<sup>5</sup>." The Duke remained firm, and finally, on June 7, refused to form any administration

<sup>1</sup> Cf. Lord Granville: "Pitt used to call me madman, but I never was half so mad as he is." Walpole, *George II*, ii. 284.

<sup>2</sup> "Lord Hardwicke proposed to waive this point [the expenditure of money abroad] *ad referendum*, knowing how easily they should settle the nation's concerns, if they could agree upon their own." Walpole, *George II*, iii. 21; *Letters*, iv. 54, 57; N. 186, ff. 128 sqq.; H. 12, f. 262.

<sup>3</sup> "Lord Hardwicke notwithstanding his predilection for Pitt, owned that Fox was the more practicable," and considered Pitt "out of the case." Walpole, *George II*, iii. 15.

<sup>4</sup> H. 12, f. 264; pp. 396 sqq.

<sup>5</sup> H. 68, ff. 228-230, and see also f. 232; p. 398.

without Pitt. The King expressed great indignation at his conduct, the motives of which appeared to him only ingratitude and ambition. "I shall see which is the King of this Country," he declared, "the Duke of Newcastle or myself"; and the Royal displeasure was cleverly manipulated by Fox. "If the Duke of Newcastle," he said piously, "would join Pitt and Leicester House to make the King *prisoner*, the King knew the Duke of Newcastle could do it, but his Majesty would not believe it of him<sup>1</sup>."

The King in his wrath and despair turned now to Fox to form a Government with Lord Waldegrave as the nominal head of the Treasury. The nominations to the offices, which included those of the Duke of Bedford and of the still adventurous Lord Granville, were made on June 8. But the new Cabinet had no chance whatever of maintaining its existence in face of the powerful parties arrayed against it, and it collapsed before it had made a single appearance in public. On June 12 Fox, who now appeared to have at length realised his most ambitious expectations, together with the other ministers, assembled at Kensington to receive the seals of office. Meanwhile, however, grave doubts as to the prudence and practicability of the new venture had developed in the mind of the King, and the entrance of Lord Mansfield into the Closet to surrender the seals of the Exchequer, temporarily placed in his keeping as Lord Chief Justice, gave occasion for further debate and deliberation. The King asked his opinion, and received the answer that the proposed plan was both impracticable and perilous, and calculated only to throw public affairs into greater confusion. The King now confirmed in his dissatisfaction, resolved immediately to put an end to the whole scheme, and ordered Lord Mansfield to apply at once to Lord Hardwicke and the Duke of Newcastle. Lord Mansfield, accordingly, departed with the seals still in his possession, while the new ministers, who had all been waiting in the King's antechamber for formal admittance into their respective offices, returned home amazed and indignant<sup>2</sup>. Thus "his Majesty and the country were deprived," if we may believe Fox, "of as able, as honest, and as firm a ministry as this nation and these times could furnish<sup>3</sup>."

Lord Hardwicke was now desired by the King, in consideration of the state of affairs, both at home and abroad, to hasten the settlement of some administration that might not be changed again

<sup>1</sup> p. 388.

<sup>2</sup> pp. 398-400.

<sup>3</sup> *Bedford Corresp.* ii. 246.

in five months. On June 15 he had an interview with the Sovereign, "a very long and painful audience<sup>1</sup>," the details of which he has never disclosed, but in which no doubt he tried to calm the King's feelings, and at the same time to put the situation clearly and firmly before him, and to impress upon him the absolute necessity of yielding to the force of circumstances. In the end he left the Closet with full power for settling an administration, and for bringing in Pitt and his party.

The difficulties of the undertaking were obvious. Claims, ambitions, hopes, must be satisfied, and fears, jealousies and animosities composed. The old King's inclinations must be withstood and overruled, yet with all possible consideration and regard for his feelings, the Duke of Newcastle's power and political influence secured against the encroachments of an ambitious and intriguing rival, Pitt's demands satisfied and his abilities given in the new administration a fair and proper field of activity, Fox, the favourite of the King and the Duke of Cumberland, provided for, while the approval of Lord Bute, the rising star at Leicester House, must be gained. Lastly, it was a point of honour with Lord Hardwicke, that the great seaman who had been the unjust object of popular censure and abuse, and of the attacks of Pitt and his friends, should be reinstated in office with full honours.

Above the reach of jealousy, untouched by the animosities of faction, inspiring universal confidence, Lord Hardwicke was the only man in England who could have accommodated the jarring interests and ambitions then prevailing, and welded them together for employment in the public service. By the exercise of great tact, patience and good humour, a clear conception of the wishes and aims of the different parties, together with an unrivalled influence and authority, all the more powerful now because obviously honest and disinterested, he succeeded in his difficult task, and at length effected that union of persons and factions which, partly from the King's dislike and the Duke of Newcastle's jealousy, but chiefly owing to Pitt's own impracticable temper, mistaken conduct and false tactics, had so often miscarried before, to the injury of the interests of the country.

On quitting the Closet on June 15, Lord Hardwicke had promised to wait upon the King on June 17 with some plans, but he had afterwards desired a day longer, and by June 18, only

<sup>1</sup> See also the King's expression (below, p. 401), "When Lord Hardwicke was with me to-day, I was so heated and in such a passion...."

three days after he had received the King's commands, he had triumphed over all difficulties and, with the exception of his own successor, gave in on that day a list of new ministers, which, though by no means in entire accordance with the royal wishes, was immediately accepted. Pitt became Secretary of State for the Southern Department, with Lord Holderness as his colleague in the Northern Department, who now entirely transferred his allegiance from the Duke of Newcastle to the former. Legge, another adherent, returned to his office of Chancellor of the Exchequer. George Grenville, Pitt's brother-in-law, was made Treasurer to the Navy, and James Grenville obtained a post in the Treasury. On the other hand, the Duke of Newcastle resumed his place as head of the Treasury and of the administration, and Lord Anson, and not Lord Temple, Pitt's candidate, who was appointed Lord Privy Seal, became once more First Lord of the Admiralty. His restoration was effected through Lord Hardwicke's influence, who, with the King's zealous support, had made this a cardinal point in the negotiations<sup>1</sup>. "The most surprising phenomenon," wrote Lord Waldegrave, "was Lord Anson returning to his old employment in spite of his unpopularity, and of all the abuse which had been raised against him by the very men who were now to be his associates<sup>2</sup>." Lord Halifax returned to the Board of Trade and the Colonies, Lord Granville remained President of the Council, and Lord Barrington, Secretary at War; while the Duke of Devonshire was appointed Lord Chamberlain, the Duke of Bedford Lord Lieutenant of Ireland, and Fox, to content the King's and the Duke of Cumberland's partiality, obtained the Pay-mastership of the Navy, an exceedingly lucrative post, of which he made a good use, and which, together with the reversion of the office of the Pells in Ireland of £1800 a year, for the lives of his two sons, in addition to his present sinecure of nearly £700 a year, and a peerage later, satisfied his political ambitions and sufficiently rewarded his virtues<sup>3</sup>.

Lord Hardwicke himself declined resolutely to return to his

<sup>1</sup> p. 403; Walpole (*George II*, iii. 32) is in error in ascribing Anson's reinstatement to Pitt, and the great merit which Pitt ascribed to himself later for it is quite unjustified, above, p. 353.

<sup>2</sup> *Mem.* 135; cf. Lord Ashburnham, who is surprised, but glad of it, as "it will put Lord Hardwicke in good humour." N. 186, f. 348.

<sup>3</sup> "Fox accepted the pay office, professing great content and that he should offend neither in thought, word nor deed. Both Newcastle and Pitt acted wisely in permitting him to enjoy this place; he was tied up from giving them any trouble." Walpole's *George II*, iii. 31.

own great place, and refused to consider the Duke of Newcastle's plan of accepting another term of office, of which the onerous duties should be mitigated by the assistance of Lord Mansfield, both in the House of Lords and in the Court of Chancery. Neither would he remove Lord Granville by taking his place as President of the Council, but joined the Cabinet without office<sup>1</sup>. There appeared no person worthy or ready to succeed him on the Wool-sack. Lord Mansfield, just made Lord Chief Justice, and the Master of the Rolls, both refused it. Lord Chief Justice Willes, Lord Hardwicke's old rival, who had never recovered from his disappointment of 20 years ago, insisted upon high terms and a peerage, and was once more passed over; and the recently-appointed Attorney-General, Sir Robert Henley, was made Lord Keeper with the Speakership of the House of Lords and the reversion of a tellership for his son, but without a peerage<sup>2</sup>.

Lord Hardwicke concluded the settlement of the administration with a great act of generosity and self-sacrifice. The succession to the vacant Attorney-Generalship obviously belonged by right and custom to Charles Yorke, now Solicitor-General, and beyond all doubt the leading member of the Bar at this time. The happiness

<sup>1</sup> pp. 391, 395; cf. Speaker Onslow to the D. of N., who had sent him the list of the new Cabinet, "There is an Earl of Hardwicke. Where is he?" N. 186, f. 342; Walpole's *George II*, iii. 22; *Letters*, iv. 57, 65. "Lord Hardwicke refuses the seals; says he desires nobody should be dismissed for him; if President or Privy Seal should by any means be vacant, he will accept either, but nothing till Lord Anson is satisfied....Lord Hardwicke, *young disinterested creature*, waits till something drops." "To be sure," adds the writer sarcastically, with his usual perspicacity and foresight, "all this...will produce the utmost concord! It is a system formed to last, and to be sure it will." The successful consummation was also much regretted by the intriguing Glover, to whom it came as a bitter disappointment. "Lord Hardwicke at that juncture appeared once more a principal character on the political stage....In the midst of their mutual perplexity Lord Hardwicke interposes with his specious and artful assistance; by the 29th of June a new administration is formed; the Seals are redelivered to Pitt without any reality of power....Hardwicke replaces his unpopular and obnoxious son-in-law, Lord Anson, in the Admiralty...himself though out of employment, possesses the confidence of the King and is equally courted by Newcastle and Pitt: the scene closes with the retreat of Colonel Townshend and the country gentlemen from London, all disgusted, some from generous, most from interested motives." *Memoirs*, 145, 150-1; cf. also Soame Jenyns on the new Government: "As it is composed of as many heterogeneous parts as election port, I am a little afraid it will burst the hoops on the first fermentation, and suspect that the brown sugar of His Grace of N., the bouncing cyder of Lord Gr[anville] and the mob-inflaming gin of Mr P. will never kindly incorporate, notwithstanding all the wise and delicate cooverture of Lord H[ardwic]ke." H. 283, f. 12.

<sup>2</sup> H. 247, f. 63; Glover's *Mem.* 108 sqq.; Dodington's *Diary*, 352; Walpole's *Letters*, iv. 43 sqq.; *George II*, iii. 22 sqq.; *Grenville Papers*, i. 183 sqq.; Lord Waldegrave's *Memoirs*, 108; *Bedford Corresp.* ii. 249-260; Phillimore, *Mems. of Lord Lyttelton*, 596; below, pp. 407 sqq.

and advancement of his children were the dearest objects of Lord Hardwicke's ambition; and his hopes were centred especially on his second son, whom he regarded as his successor and whom he saw with delight, advancing through the same offices, which he had himself filled, to the same honours and distinctions. Yet on the pressing instance of Pitt, and in order to furnish no obstacle to the prompt settlement of the Government or give occasion for discontent, disunion or delay, he now gave his consent to the promotion of Charles Pratt, over his own son's head to the vacant post, though his junior by some years at the Bar<sup>1</sup>.

This personal sacrifice, however, to which he now felt it his duty to submit, was largely compensated by the justification of the old ministry, to which he had for so many years given his support, begun at the court-martial of Byng, carried still further by the result of the parliamentary Enquiry and now completed triumphantly by the return of the censured ministers to their former offices, supported as colleagues in the new administration by those who had attacked them with the greatest violence a few months earlier. The great advantage too of the settlement of a strong stable Government at this time of crisis put all smaller private interests into the shade. In the new Cabinet were united all who, by their weight or talents, had the chief claim to a share in the administration. While the great Whig governing families retained in it their power and influence it contained, to use Lord Hardwicke's own expression, "so much of the popular mixture as might be able to sustain some bad success<sup>2</sup>," and by including members of all factions, divided by no real difference of political principle, it promised greater stability and endurance and satisfied public opinion. Parliamentary opposition was disarmed and extinguished and popular discontent and antagonism silenced. Lastly the support of Leicester House and of the heir to the throne was gained for the administration, and the royal family united. Lord Hardwicke "has done in it as he always does," writes Lord Lyttelton, "like a wise and honest man. He said that if the Royal Family remained disunited, no ministry could stand upon solid foundations or have strength enough to carry on the war we are engaged in, or make the peace that we want in any

<sup>1</sup> pp. 402, 409-10. There is no truth whatever in Walpole's statement that Lord H. had the choice from Pitt to restore Lord Anson or promote his son, and that Charles Yorke "never forgave his father" for his action (*George III*, i. 99), and for similar baseless gossip see Potter to Pitt, *Chatham Corr.* i. 160.

<sup>2</sup> p. 411.

event. The present plan reconciles all, unites all, and will give all the strength to the Government that can be brought together in the nature of things<sup>1</sup>." It was a great settlement of union and reconciliation in face of the foe. The political energy of the nation, wasted before upon domestic dissensions and weakened by divisions, could now be employed and concentrated on the great struggle with France and on the immense expansion of British empire and power which were to follow, and which, without a strong and independent government at home, would have been impossible.

The prompt settlement of the new administration, indeed, was effected only just in time to prevent irretrievable disaster to the whole British cause. Since the retirement of the Newcastle ministry the preparations for the struggle had been interrupted and generally neglected. The French were about to pour into Hanover. On June 24, the news of the King of Prussia's complete defeat at Kolin was received. On June 29 the new ministers kissed hands for their new offices.

## CORRESPONDENCE

[On November 23, 1756 (H. 68, ff. 143-5), the Duke of Newcastle sends to Lord Hardwicke a letter from Lord Holderness, containing particulars of the King's dissatisfaction with his new ministers and of his refusal of the King's Speech prepared by Pitt. He desires that an answer may be written to *The Test*\*.]

*Earl of Hardwicke to the Solicitor-General*

[H. 5, f. 200.]

Novr. 28th, 1756.

DEAR CHARLES,

I received this morning the enclosed card from Mr Pitt<sup>2</sup>. His excuse for not coming is certainly a true one: but as he says nothing of making me a visit after he is well enough, I am doubtful whether to understand it as an excuse for not coming *just now*, or as conveying an intention not to come *at all*, though I rather think

<sup>1</sup> Phillimore, *Mems. of Lord Lyttelton*, 599.

\* *The Test* was writ by Murphy, under Fox's direction. My Father was no great encourager of pamphlet writing: did not care to be quoted, though liked to have it done for him by others. H.

[Arthur Murphy (1727-1805), the actor and playwright. He obtained, through Fox's support, admission at Lincoln's Inn. *The Test* was answered by *The Contest*. See f. 158 and below, p. 375.]

<sup>2</sup> f. 202, excusing himself for not visiting Lord H. on account of illness.

the former. However, I wish you would take an opportunity to call upon him some time to-day. It is proper for you both in respect to his situation and your own. I would not advise you to enter far with him, but to hear what he will say. If he has a mind to approach towards us, he will probably drop something or other from which some conjecture or inference may be made. You may thank him in my name for the civility of his cards. If he should happen to be engaged or denied to you when you call, he will probably send for you to come to him, in case he has a mind to see you. He lives in Great Brook Street, on the right hand side going up from hence....

*Earl of Hardwicke to the Solicitor-General*

[H. 5, f. 204.]

POWIS HOUSE, Decr. 5th, 1756. Sunday.

DEAR CHARLES,

The reason of my inclining on Friday last that your visit should be suspended, was the suspension which then appear'd of Mr Pitt's coming into his office ; but yesterday he accepted the seals and Sir Richard Lyttelton and Mr Potter kissed hands. By this it appears that their system is hobbling on, and in order to support it at all, they must unite with some other division. By everything which one hears, and the declarations of some considerable Tories, their present scheme is to unite with the Tories. But they can't be so weak as not to know that this will not do alone, for they had the assistance of the votes of that party in general the last session. Neither does it seem practicable to go on upon such a plan with the Duke of Devonshire at their head. Having been blooded this morning for my cold, I cannot go out to-day : but to-morrow, or at least the first time I go out, I will call at Mr Pitt's door as a visit of congratulation. I should, therefore, be glad if in the meantime you could see him, and sound him in the manner that was settled between us<sup>1</sup> : and, if you should see him, let me know the result.

I am, etc.

H.

<sup>1</sup> f. 203. Charles Yorke was to convince Pitt of the advantage to both parties of the latter's joining with the Newcastle Whigs.



*Earl of Hardwicke to the Duke of Newcastle*

[N. 184, f. 253.]

POWIS HOUSE, Decr. 6, 1756.

...I thought I could not take a more proper opportunity of calling on Mr P[itt] than by way of visit of ceremony on coming into his new office. I heard last night that he had a fresh touch of the gout, but resolved to take my chance this afternoon. Contrary to expectations, I was let in and carried upstairs, and found him under a thorough relapse, with one leg wrapped up in flannel and complaining of having suffered much pain in the night. I will not trouble your Grace with his expressions of civility to me, which were overflowing; but after they were over I began by taking occasion from last Saturday's *Test*<sup>1</sup>, to say I found we were libelled together in the same paper, and laughing said that it was a trite observation in religious matters that common persecution brought people together. He said he knew that paper was writ by a creature of Mr F[ox]'s, and from hence the material conversation took its rise. I cannot pretend to relate the dialogue to your Grace for he kept me a full hour. On my part I proceeded on the topics which had been talked over between your Grace and me. I shewed him guardedly how we had stood off from all tenders made from *that quarter*: and in particular had no hand in, but had been entirely ignorant of the addition made to the Lords Address, till after the news of it was brought from the General Meeting of the Lords, and also of the suggestion of a motion of that nature being to be made the next day in the House of Commons<sup>2</sup>. He said that addition of thanks was projected merely to put him under the greatest difficulty. That, if it had been moved in the House of Commons, he would not have taken the seals and all his friends would have quitted. That he had from the first maintained that we had no hand in it, but that it had proceeded from a certain corner of the Court<sup>3</sup>. But he rejoiced to be confirmed in the former

<sup>1</sup> No. 4 of December 4, written by Murphy, the actor, on behalf of Fox (Walpole's *George II*, ii. 276); where Pitt is satirised under the name of Reldresal and Lord Hardwicke under that of Golberto Gurdillo, Hurgo High Justiciary of Lilliput. "The Hurgo High Justiciary was thought no ill decider of causes, but his turn was such that he must have the lead in the Cabinet, where his pride, his dullness and delay served only to perplex the affairs of State. His temper was greedy and rapacious," &c. See also *The Test*, No. 7, of December 26, printed in the *Gentleman's Magazine*, xxvi. 604, where "Philip has a very strong aversion to matrimony, and was never easy but when regulating the family affairs with the Old Woman [Duke of N.] in the Pantry."

<sup>2</sup> See p. 360.

<sup>3</sup> Duke of Cumberland.

part by what I told him because he could make a good use of it. Upon this I insisted that he should not relate to anybody, not even to his most intimate friends, what passed in this conversation, which he gave me his word and honour he would not. He then commended the Duke of Devonshire, but talked of persons that got about his Grace who meant him (Mr P.) ill. I then told him I would speak to him with some freedom. That he might be sensible that the nature of the ground he stood upon could be no secret, which he admitted; said the King had given him the Seals very graciously but made no boast of what was said to him. I then let him see that neither your Grace nor I thought we had any obligation to him, but had reason to be offended: but we disliked insidiousness more than open hostility, and were desirous to support the King's government and to keep this Constitution upon its true and *legal balance*. This he understood and gave me to understand, that he would never have anything to do with Mr F[ox]. That if he could go on, he would: if not, he was prepared to go out. That he did not know whether he looked upon the former with greater pleasure than the latter, to which the state of his health might now probably incline him. I then shewed him that nothing could drive us to a junction with that quarter, but violence in pushing enquiries and censures, and that would unavoidably bring it about: that I did not say this from any fear of an enquiry; that neither your Grace nor I nor my Lord Anson feared it: that I was sure the nearer he or any of his friends looked into things past officially, the more they would be convinced that everything was done that could reasonably be done; but I spoke to him naturally and partly for his own sake; as any kind of violence would create and cement factions in the Parliament and intrigues in the Court, and he had foresight enough to see how that would probably end. He then referred to what he had said in the House the first day as a proof of his temper and moderate intentions, which he hoped I did not disapprove. In short, he disclaimed even *censures*, and talked of the enquiry as a thing that would ruin him, if he attempted to stop it in the outset, after what he himself had formally declared. In short he treated it as a slight thing, threw out indications of much disposition, was very glad if this opening with me, etc;...but then passed on to the affair of the Hanoverian soldier, which he professed to be a *more important thing* than the other. That he would neither move it nor instigate it, but somebody or other would do it: and if it was brought in, he could not help going along with it to

a certain degree<sup>1</sup>. I won't repeat the defence which I made for my Lord Holderness on this subject, but I shewed him some things which he did not seem to have thought of before ; and then told him that, in my opinion, there could not be a more unfortunate thing for himself than for that point to be brought in the House of Commons. That nothing could tend more to entangle and embarrass him at Court ; that great advantages would be taken from it against him, and he would bring himself under the greatest difficulties for a bagatelle. He could not deny this, but I soon thought I perceived that he had taken some sort of engagements upon this head with the Tories. For he soon passed over to talk of *the country gentlemen*, how well disposed they were to support Government, how generous and candid their behaviour had been to him, and what assurances they had given him. I told him I should much rejoice to see any number of gentlemen coming to the support of the King's measures, but surely it could not be quite so generous as to be without any *conditions*, and he might lose more on the one hand than he gained on the other. He said—No conditions at all ; quite free and disinterested : merely to keep the ship from sinking. I smiled and asked, "how long do you compute it will last on that foot?" He smiled too and said he would not pretend to foretell, but surely this session. From all his discourse upon this head, I perceived that this dependence might make him imagine that he need not go very fast towards a coalition, either with us or any other set, for he said he must look about him a little, etc: but adhered to his aversion to a *certain corner* of the Court<sup>2</sup>. I laughed and told him that when he came to converse with those country gentlemen he would not find that our side of the late administration was the object of their greatest enmity. I took my leave of him with great civility and he of me, with many professions, and protested that he wished for the use of his legs for nothing more than that they might carry him to me.

Your Grace now sees the whole of our conference in a sufficient light to form some judgment upon it. You see a negative to one quarter and no indisposition to the other, and a plain reason why he did not speak more out at present. I think it not an unfortunate beginning, but it must be left to him for the present, for more pressing would do no good but hurt. It is plain that the hopes from the Tory quarter make him incline not to make further

<sup>1</sup> See above, p. 278.]

<sup>2</sup> Duke of Cumberland and his following.

advances at present, and I should think that upon that aspect your Grace might learn something from my Lord Shaftesbury, and he and his friends might be useful instruments to forward the affair.

I found by Mr Pitt that there is a design, whether fixed or not I can't tell, to raise three new regiments in the Highlands to be sent to North America<sup>1</sup>. I told him that was a dangerous resource and put him in mind of Lord Loudoun's regiment, raised in 1744, which in 1745 deserted, almost all, both officers and private men, to the Pretender. He distinguished between the cases and thought they would do well enough in North America, and that it would be a drain and not many of them would return. I said that was prophesying as bad success as we had. This scheme will gain the Scotch.

It is said that the Duke of Bedford is to kiss hands for the Lieutenancy of Ireland to-morrow.

On Wednesday I propose to go to Moor-Park<sup>2</sup> and stay till to-morrow, i.e. Tuesday sev'nnight, to try and get rid of my cold, which I think is the better for bleeding. I am, my dear Lord, most affectionately and unalterably,

ever yours,

HARDWICKE....

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 166.]

HAGUE, Dec. 7th, 1756.

DEAR BROTHER,...

...In general, honest people who wish us well think we should do better to unite than to divide, and wonder at our leaders for being so warm upon interior affairs which take off the attention from the enemy which is at our doors....The French Minister pretends to foretell peace from it, and says that the plan of the new Ministry is pacific....I was sorry to see the new Ministers libelled before they were seated in their new places, because that shews such a spirit of disunion and faction to be prevalent in the nation that wants nothing but the dissolution of the present Parliament to complete....I am often low-spirited with these appearances, the more so because I am sure it is not for want of force or honest men that things don't go better. Whilst you are settling, or are thought to be so, the foreign world, who have any connection with you, are in suspense and absolutely decline entering into any business that concerns you, till they know upon what plan you intend to proceed.

<sup>1</sup> See vol. iii. 29.

<sup>2</sup> Lord Anson's.

As to the King of Prussia he, as the most active, waits impatiently till he sees what will be the result of all the promises that have been made him; and the Dutch merchants take advantage of your attention at home to send their naval stores to France, whilst the Government disclaims any intention of quarrelling with you<sup>1</sup>.... All I have said a long while is still the truth. England must shew the way, if they have a mind anything should be done.... As long as we talk in a general style, without speaking out, we shall go on from bad to worse....

For God's sake unite, if you are not determined to be ruined and ruin the whole Protestant cause....

I am, dear Brother,

Your most obliged and affectionate....

J. Y.

[The Duke of Newcastle writes on December 11, 1756 (N. 184, f. 320; H. 68, f. 147), to Lord Hardwicke from Claremont. The King, the Duke of Cumberland and Pitt have adopted the Prussian plan, which he approved and always wished, but is surprised at, considering Pitt's former denunciations of Hanover\*. Expeditions to Canada and the East and West Indies would also be included. The raising of Highland corps for North America he had himself proposed to the King a year ago, but it was then rejected with scorn.]

*Earl of Hardwicke to the Duke of Newcastle*

[N. 184, f. 347.]

MOOR PARK, Dec. 12, 1756. Sunday, one o'clock.

MY DEAREST LORD,...

Here is a great deal of extensive and expensive work cut out for the new Ministry, more I am sure than we could have gone through under the weight from bad successes and their opposition, and more I will venture to prophesy than they will be able to go through under the load of additional expenses and the reluctance of their new friends, the Tories (to whom these measures are *foreign* in every sense), and even with the assistance of those who have reason to be their enemies.... What our new ministers will do to comply with His Prussian Majesty's demands I cannot imagine; but he is in such a situation that if they are not complied with in substance, I think he will be forced to make his separate peace with the Courts of Vienna and Versailles, and then

<sup>1</sup> Writing on December 10 (H. 9, ff. 80, 82) he informs Lord Hardwicke that the Dutch were "sending in the most flagrant manner all kinds of naval stores to France under convoy of their men of war."

\* Pitt found it necessary to make way in the Closet. H.

where are we? Your Grace observes rightly that all last Spring the King of Prussia joined in increasing our alarms of dangers of invasion at home and exciting our precautions on that head. Now he joins in blaming the consequences which those precautions produced....My apprehensions are strong that the security of this Country will be risked, and then we may probably invite what otherwise would not have happened....

*Duke of Newcastle to the Earl of Hardwicke*

[H. 185, f. 21; H. 68, f. 162.]

CLAREMONT, *Jan. 4th*, 1757.

[The King of Prussia was in great distress, Russia apparently intending to accede to the Treaty of Versailles and join the French and the Austrians against him. The King, moreover, was now disinclined to enter into joint measures with him and wished to confine things entirely to the defence of Hanover only. The Duke of Devonshire spent his time running between the King and Mr Pitt and endeavouring to adjust the points in dispute, which included the sum of money to be given to the King for Hanover and the number of troops to be sent to N. America. These, Mr Pitt insisted, should be 8000 but objection was taken by the Duke of Cumberland. Mr Fox, in an interview with Hume Campbell, had informed him that "he had told the King, or conveyed to the King, that whenever it was proper to drive out these gentlemen, there should neither be wanting expedients or courage to support his affairs"—a plain declaration that he would undertake the Administration. He had had] a very satisfactory account of Admiral West's evidence and Lord Blakeney's, which seemed almost of themselves sufficient to condemn Mr Byng. My Lord Blakeney swore positively to the practicability of flinging in succours and that *that* would have saved the place....

*Earl of Hardwicke to the Duke of Newcastle*

[N. 185, f. 58.]

POWIS HOUSE, *Jan. 7th*, 1757, at night.

MY DEAR LORD,...

Could I have been the first to have sent you the *Monitor* of Saturday last (which I never heard of till after I came to Town), it would have been sending you *news* indeed; for I flatter myself your Grace never before heard or imagined anything like it of your old and faithful servant<sup>1</sup>. Don't fancy that I mention this

<sup>1</sup> This piece was the composition of the egregious Dr John Shebbeare, who had already obtained notoriety by his pamphlet against the Chancellor on the occasion of the Marriage Act, above, p. 62. Walpole, *Letters* (1903), iv. 26. In the present article, Lord Hardwicke, as *Grypus*, was compared to Wolsey much to the latter's advantage, whom,

libel because it gives me any pain, for upon my word it has never given me the least pain. It is so outrageous and beyond every mark, that its own violence destroys its effect; and the fellow might as well have affirmed in print that I had headed a rebellion against the King or usurped the Crown.

But your Grace and many others have reason to take it heinously ill. You have fancied yourself a minister, but have been all along a tool under this absolute omnipotent *Wolsey*, and all those who have enjoyed places and pensions are obliged to him only. The nobility have shown themselves a pack of mean-spirited contemptible wretches to submit so long to the insolence and overbearing of this tyrannical sole minister. But I have said more upon this paper than I intended to have done, even in the way of ridicule, for indeed it is very ridiculous, and contains not one word of truth except in the single line, where it is said that *I declined being a manager of the impeachment against my Lord Macclesfield*, to which I plead guilty<sup>1</sup>. I will add no other serious reflection but this, that

it was said, he resembled "in all his bad qualities...and exceeded infinitely in the low arts of selfishness and cunning,...but was an utter stranger to his good ones," being "Avarice itself," and "never was known to do a common office of humanity to any creature living except he saw a prospect of reaping a greater advantage to himself," and having "hoarded up the treasures of Mexico and Peru...grew wanton and insolent...lorded it over his Sovereign," who became "inaccessible to every one but this monster of power and his hireling associates." Moreover, "not content with precipitating the nation into the most ruinous measures, loading it with intolerable burdens and consuming the lives of thousands in fruitless expeditions, he, to show he was capable of doing more mischief than the worst of tyrants, devised and enforced a scheme for cutting off any further supplies for our fleets and armies, he set himself in open defiance to the first law of GOD and NATURE, and enjoyed the exquisite pleasure of seeing the British race hourly dwindle away." The composition rises to its highest flights in the concluding peroration. "Should the law that seized upon Woolsey's wealth permit Grypus to die undisturbed in possession of his immense riches amassed by the like iniquitous practices? Should the Royal Exchequer be empty and the coffers of Grypus continue full to the brim?...Should Grypus whirl through the crowd of widows, virgins and orphans, imprecating the vengeance of Heaven on his head glittering with a C[o]r[o]n[e]t, which distinguished him from his original plebeian race, and not be called to answer for the disgrace he had brought upon the British diadem? Had such a monster of ambition and avarice attempted to console himself at home with the contemplation of a million of money amassed in the manner above mentioned, and while the good people of England hissed at and cursed him, as he rolled along in his gilded chariot, dared to applaud his own sagacity and to defy the censure of the public, I cannot be persuaded but that they would have exerted such a just spirit of resentment as their forefathers did, who punished Woolsey, Bacon and Macclesfield." "You would have been angry," writes Mrs Montagu on November 12, 1756, of an earlier production of the same journal, "if you had seen a late *Monitor* abusing Lord Hardwicke, comparing him directly with Wolsey and assuring you he was worse than Jeffreys: this abuse cannot hurt the most respectable of men and magistrates, but it is a sad sign of the depravity of our country...." (*Letters* (1813), iv. 31.) See also H. 50, f. 272.

<sup>1</sup> Vol. i. 88.

it is manifest this arrow comes from the same quiver with the abusive paragraphs in *The Test*. That Author and his patrons began the attack on *us*, and this is as an extension of it: and it is remarkable that the person<sup>1</sup> of whose being patron and instigator of *The Test*, your Grace has evidence in your hands, is panegyriz'd and courted in this very *Monitor*. It is also remarkable that some strokes in it fall in with what that gentleman said of me to Mr H[ume] Campbell<sup>2</sup>. I found by Sir Thos: Robinson this morning that his complaint of *overbearing in Council* was principally levelled at me, and he judged right as that was most likely to find ingress in that place<sup>3</sup>. But I make no doubt but, in other places, your Grace has an ample share of it with equal regard to truth, for which the appeal may securely be made to those who sat with us. The political view of all this is plain. They cannot help seeing that we have some credit in our Country. They have also seen the King's *apparent* regard for us, and dread his inclination to take us again, of which the language has been too open. This event *The Test* and his patron dread, as much as the others, unless it be under him as supreme: and, therefore, in order to shut the door all the villainous arts of defamation are to be tried and the mob is to be halloo'd upon us. But I suppose we are not to be cudgelled into an alliance.

[He proceeds to discuss the situation and affairs abroad and the unfavourable position of the King of Prussia. He had himself, before quitting office, seen symptoms of disinclination in the King against entering into joint measures with his Prussian Majesty. He still thinks the danger of an invasion from France not over. Last Thursday he had made the round of Savile House, the King's Levée and the Drawing Room.] All was very civil; gracious looks and words both at Levée and Drawing Room but nothing more. No revival from your Grace's *old friend*<sup>4</sup> of the story of *coming in again in a month*, nor anything tending to it. As to His Majesty's scheme, I make no doubt but he intends to get his supplies under these new ministers, but whether afterwards to throw all in to Mr Fox, I cannot presume to decide. I rather incline to think *that* is the view, whether we join with him or not....

<sup>1</sup> Fox.

<sup>2</sup> N. to H. "Mr Fox was full of complaint of your Lordship and myself, of our manner of acting in business." N. 185, f. 25. Hon. Alexander Hume Campbell, younger brother of Lord Marchmont, M.P. for Berwickshire.

<sup>3</sup> The Duke of Cumberland probably.

<sup>4</sup> Princess Amelia is probably meant.



As to my good friend, my Lord President [Lord Granville], my rule is *nil admirari*. His fondness for the new minister (if he be so) is as inconsistent as his present conduct is with that of the last year. For what are *great ideas* that are *impracticable*<sup>1</sup>?...I can collect no great matter from Mr Fox's conversations....I doubt much whether what he said "he had conveyed" to the King is anything new....

Whilst I was out of Town Charles had a long conversation with Mr Pitt....All generals; showing a disposition; professing great moderation; wishing the enquiry was over; but (which was remarkable) reviving nothing about the Hanoverian soldier, and I find from other quarters that stock is much fallen....Charles talked very properly to him and with firmness, and upon flinging out the idea of dissolving the Parliament as a thing talked of, he disclaimed it. He has not yet been out except for airing....I find the measure of raising 2000 Highlanders alarms many of the best affected; particularly the making Councillor Fraser<sup>2</sup> Colonel of one of the battalions. I own I am surprised to see that given way to. The event will certainly be the reviving the Jacobite clan Fraser under this young Lovat and I shall expect to see him chose knight of the shire for Inverness at the next election. Nothing could more effectually break in upon the plan which has been pursuing for that Country ever since the last Rebellion, and I dare say the scheme is to put an end to it.

When I had writ thus far the Duke of Grafton<sup>3</sup> came in to make a visit to Wolsey. He sat an hour and was excessively good to me; but I have picked up little from his Grace except that he confirms what I have said before of the extraordinary resort to the Lady<sup>4</sup>, and hints at some difference of opinion between His Majesty and Monseigneur<sup>5</sup> about measures at present. I guessed it was about taking measure in conjunction with Prussia.

I entirely subscribe to your Grace's opinion that we have nothing

<sup>1</sup> Lord Granville had said to Sir Thomas Robinson that Pitt "had great ideas, but was impracticable." See D. of N. to H., N. 185, f. 24.

<sup>2</sup> Simon Fraser, eldest son of Lord Lovat, executed in 1747 (1726-1782); also took part in the rebellion, but was pardoned; a member of the Scottish Bar; now given the command of the 2nd Highland battalion or 78th Highlanders, who distinguished themselves greatly in Canada with Fraser at their head; he had been counsel for the widow of the murdered Colin Campbell of Glenure.

<sup>3</sup> See vol. i. 229 n.

<sup>4</sup> Pitt's visits to Lady Yarmouth.

<sup>5</sup> Duke of Cumberland.

to do at present but to wait for events, and to take care that our friends in the House of Commons are not surprized....

I am, my dearest Lord,

Most faithfully and affectionately yours,

HARDWICKE.

*Duke of Newcastle to the Earl of Hardwicke*

[N. 185, f. 70; H. 68, f. 170.]

CLAREMONT, *Jany. 9th*, 1757.

MY DEAREST LORD,

I received just as I was going to Church the honour of your Lordship's most friendly, wise, manly and judicious letter....

I never saw that infamous paper, *The Monitor*, till yesterday morning. I had heard it spoke of by everybody with the indignation it deserved, and I was so curious to see it that I sent for it from London and did not get it till yesterday morning. It filled me with all the indignation, abhorrence and resentment that such a villainous libel, every word of which I, *to my own knowledge*, knew to be false, against the person in the world I loved and honoured the most, could do. But I have great satisfaction to see that all those who speak of it (and everybody does) that has seen it, talks alike with equal abhorrence upon it. My Lord Mansfield and Mr Stone were both here; they expressed their abhorrence to the highest degree, and I must do my Lord Mansfield the justice to say that he expressed himself upon the matter of it almost in your own words, that every article in it destroyed itself by the absurd and evident falsity of it. He told me with pleasure a fact which I hope may be true, viz. that my Lord Bath intended to complain of it in the House of Lords....Such an outrage against (without a compliment) the man in the world who deserves it the least, must animate both Houses and all serious people against these libels, their authors and their protectors....

[The King had said to Lord Holderness, "If the Duke of Newcastle thinks of coming in again, he must join with Mr Fox." He entirely disapproved of the scheme for the Highland regiments. The Duke of Cumberland, he heard, disapproved but submitted. It was all the Duke of Argyll. Lord Hardwicke must consider in what way they could best show the weight of their party in Parliament. Lord Bute had been with Lord George Sackville and had told him that the Prince of Wales had his eye upon him.]

*Col. the Hon. Joseph Yorke to the Earl of Hardwicke*

[H. 9, f. 89.]

HAGUE, *Jany. 14<sup>th</sup>*, 1757.

...This gives me great concern; I am grieved to see my Country fall into contempt in Europe whilst she is voting above eight million sterling for the current service of the year which, if well employed, should humanly speaking drive the world before us; but whilst nobody is instructed and discord prevails, what good is to be expected....

*Earl of Hardwicke to the Solicitor-General*

[H. 5, f. 210.]

*Feb. 17*, [1757].

Lord Hardwicke acquaints Mr Solicitor that the inclosed message is to be sent to-day from the King to the House of Commons. 'Tis a strong continent measure—drawn by Mr Pitt himself! 'Twill be brought and opened by him; referr'd to the committee of supply for Friday and then proposed to vote £200,000 to the King by way of supply for it. That is half a crown<sup>1</sup>.

Send back the message immediately and send word by and by what passes.

*Colonel Robert Clive to the Earl of Hardwicke*

[H. 247, f. 19.]

CAMP NEAR CALCUTTA, *Feb. 23*, 1757. Received *Sept. 1757*.

MY LORD,

The countenance your Lordship was pleased to show me when in England has emboldened me to address a few lines to your Lordship on the subject of the East India Company<sup>2</sup>.

No doubt your Lordship has been acquainted with the capture of the town of Calcutta and of Fort William by the Moors, the principal settlement of the kingdom of Bengal and of the utmost consequence to the East India Company. To give your Lordship some idea of the richness of the place, the loss of private property only is valued at more than 2 millions sterling.

When this unfortunate news arrived at Madras, the President and Council applied to vice-admiral Watson<sup>3</sup> for his assistance in recovering the Company's rights, privileges and possessions in the province of Bengal, and for the same purpose ordered a large body of land forces to embark under my command; and I have the

<sup>1</sup> Pitt had probably declared formerly that he would not vote half-a-crown for this object.

<sup>2</sup> Clive came to England in 1753, returning in 1755. The capture of Calcutta by Suraj ud Dowlah and the tragedy of the Black Hole had taken place on June 21, 1756.

<sup>3</sup> Charles Watson (1714-1757), commander-in-chief in the East Indies.

pleasure to inform your Lordship this expedition by sea and land has been crowned with all the success that could be wished.

The town of Calcutta and Fort William were soon retaken with several other Forts belonging to the enemy, and last of all Hughley, the second city in the Bengal dominions. This news brought down the Nabob or Prince of the Country himself [Suraj ud Dowlah], at the head of 20,000 horse and 30,000 foot, 25 pieces of cannon with a great number of elephants; our little army consisting only of 700 Europeans and 1200 Blacks, armed and disciplined after the English manner, lay encamped about 5 miles distant from the town of Calcutta. On the<sup>1</sup> [3rd of February, 1757] the Nabob's army appeared in sight and past our camp at about the distance of  $1\frac{1}{2}$  miles, and encamped at the back of the town about the like distance from Fort William. Several parties of horse past within 400 yards of our advanced battery, but as we entertained great hopes of a peace from the Nabob's promises, we did not fire upon them. On the<sup>1</sup> agreeable to the Nabob's desire, I dispatched two gentlemen to wait upon him in hopes everything might be settled without drawing the sword, but the haughtiness and disrespect with which he treated them, convinced me nothing could be expected by mild measures. This determined me to attack his camp in the night time, for which purpose I apply'd to vice-admiral Watson for 500 sailors to draw our cannon etc., which he very readily complied with, and at three o'clock in the morning [February 4] our little army, consisting of 600 Europeans, 800 Blacks, 7 field pieces and the sailors above mentioned, set out for the attack. A little before daybreak we entered the camp and received a very brisk fire. This did not stop the progress of our troops who marched through the enemy's camp upwards of 4 miles in length. We were more than two hours in passing, and what escaped the Van was destroyed by the Rear. We were obliged to keep up a constant fire of artillery and musketry the whole time. A body of 300 horse made one gallant charge and were received with so much coolness by the military that few escaped. Several other brisk charges were made upon our Rear but to no manner of purpose, and we returned safe to our camp, having killed, by the best accounts, 1300 men and between 5 and 600 horse with 4 elephants. The loss on our side amounted to 200 men killed and wounded, including soldiers, sailors and blacks. This blow had its effect; for the next day the army decamped, and the Nabob sent me a letter offering terms of accommodation, and I have the pleasure to acquaint your Lordship a firm peace is concluded greatly to the honour and advantage of the Company, and the Nabob has entered into an alliance offensive and defensive with them and is returned to his Capital of Muxadavad<sup>2</sup>.

<sup>1</sup> Left blank in the MS.

<sup>2</sup> For these events, which were followed by the battle of Plassey on June 22, 1757, the tricking of Omichand and the setting up of Mir Jaffier as Nawab in place of Suraj ud Dowlah, see Mill's *Hist. of British India* (Wilson), iii. 173 sqq.

As your Lordship heretofore honoured me with your favour and protection, I flatter myself with the hopes of the continuance of it, and that if your Lordship thinks me deserving, your Lordship will recommend me to the Court of Directors<sup>1</sup>. I am with the greatest respect,

Your Lordship's most devoted humble servant,

ROBERT CLIVE.

*Duke of Newcastle to the Earl of Hardwicke*

[N. 185, f. 237; H. 68, f. 178.] NEWCASTLE HOUSE, *March 5th*, 1757.

[Lord Waldegrave had come to see him the day before, with the King's orders to arrange a new administration in concert with Fox, who was now eager to push out the present ministers, the latter by their recent support of continental measures having lost some of their popularity. Lord Mansfield, however, had strongly advised the Duke against returning to office in the actual circumstances, and had declared that it was laying his head down upon a table to be struck at. He had therefore sent a refusal to the King.]

*Col. the Hon. Joseph Yorke to Lord Royston*

[H. 16, f. 202.] HAGUE, *April 1st*, 1757.

...What embarrasses all the friends of our cause in the present moment is the opinion industriously propagated (and which the Hanover ministers don't give themselves the trouble to contradict) that the Electorate of Hanover has made, or is sure of concluding, a neutrality for the King's German dominions. If that is so, my politics are at an end upon the Continent, and I am afraid the French and Prussians will finally make up their quarrel at the expense of Hanover, by the means of which it will not be difficult to satisfy the Court of Vienna too. I don't pretend to affirm that this surmise is founded, but all the letters from Paris, Brussels and Vienna say it positively, and true or false it has the same effect for the present<sup>2</sup>....

*Duke of Newcastle to the Earl of Hardwicke*

[N. 185, f. 376; H. 68, f. 182.] CLAREMONT, *April 8th*, 1757.

[Relates the distribution of offices in the attempted formation of the Ministry by Lord Waldegrave and Fox<sup>3</sup> and proceeds] By the following accounts of the King's present disposition towards

<sup>1</sup> See N. 191, f. 321, Lord H. to the D. of N. asking the latter to obtain the support of his friends in the Court of the East India Company for Col. Clive.

<sup>2</sup> Also H. 9, f. 108.

<sup>3</sup> For another letter from the Duke on the same subject, dated March 13, see H. 68, f. 180.

me and His Majesty's reasons for it, as well as those repeated by Mr Fox, your Lordship will not be surprised at the very gracious reception which you had at Court where, I hear, the King looked for you when you stood behind in the crowd. The King told my Lord Waldegrave that he had more reason to be angry with the Duke of Newcastle than with my Lord Hardwicke; that my Lord Hardwicke had been explicit; that he did not care to accept the Great Seal; that the King did not blame him; that he wished that Lord Anson might be restored, which His Majesty thought was not proper; that if the Duke of Newcastle came in, Lord Hardwicke would come to the Cabinet Council and that Lord Hardwicke had promised to support him. The Duke of Devonshire confirmed to me that this was His Majesty's present opinion. I assured his Grace that your Lordship had concurred with me in everything which I had said upon this subject. Mr Fox was more particular. He said that my Lord Hardwicke had assured the King that his Lordship, his family and his friends would support the King's measures. I see the view of these little arts. I always expected them. They are aggravated by the Duke [of Cumberland] to the King, not to serve you, but to lay the load heavier upon me,—and I beg it may not give your Lordship one moment's uneasiness. To my Lord Barrington the King was more particular, that I was in negotiation with Pitt, etc: that he knew the channel, viz. the Primate<sup>1</sup>, but that last was said to Holderness. To Barrington, that the D. of N. was ambitious, that he could agree with nobody, that he had drove everybody out of his service and that if he was now to come in (or force himself in) with Pitt, he would quarrel with him in a month; that the King had offered me everything, to make me Minister and to make my own administration; that if after that, when I would not come in myself, I should not support his administration, he should have great reason to be angry with me. To my Lord Holderness His Majesty was still stronger, that the Duke of Newcastle was negotiating with Pitt, etc.; that he would enter into opposition (His Majesty in all his conversations makes the distinction between your Lordship and me), and said particularly to Lord Holderness, "I shall see which is King of this Country, the Duke of Newcastle or myself\*." That was strong indeed. Mr Fox said to my Lord Mansfield, that if the Duke of Newcastle would join Mr Pitt and Leicester House to make the King *prisoner*, the King knew the D. of N. *could do it*: but His Majesty would not believe it of him, and that (as old Sankey said) is gracious indeed†.

I have put all these things together, that your Lordship may see the virulence and violence that is at present against me for not being the dupe and tool of those who now possess the King's

<sup>1</sup> Stone, the Primate of Ireland, brother of Andrew Stone, formerly the Duke of Newcastle's secretary (see above, p. 50).

\* Old George was in horrid humour at this time. H.

† One wonders the Duke of N....was not flattered with all this supposed power. H.

confidence, but never will have that of the public, and for following most strictly your Lordship's advice and my Lord Mansfield's, which was entirely agreeable to my own opinion, and in which every circumstance that has since happened must confirm me and every friend I have in the world, and for which I now in the most sincere manner return your Lordship my most unfeigned thanks.

[The Duke of Devonshire had undertaken to disabuse the King of the idea that he, the Duke of Newcastle, was negotiating with Pitt, but he refused to tie his hands as regarded the future. The Duke of Devonshire had told him that he ought to come in himself or else support the King's Ministry.] I fancy they begin to see their administration not so popular or so strong as they may wish it (though my friend the Duke of Bedford says, it is the strongest that ever was, *so many Lords* supporting *Mr Fox*). Mr Fox went on to my Lord Dupplin<sup>1</sup> that he hoped the Duke of Newcastle would take the administration; that he (Fox) would do anything; that if the D. of N. would come in, he would be Pay-master, Dupplin might be Chancellor of the Exchequer, and that there would then be the most *harmonious* Ministry in the House of Commons that ever was known; but that if the D. of Newcastle would not come in, he (Fox) must then have a Ministerial office, pointed out Chancellor of the Exchequer, and that I take to be the occasion of the present delay. He has got the reversion of Mr Dodington's place (£1800 per an. in Ireland at least) for the lives of his two sons as he before had one in England of near £700 per an....Certain it is that nothing ever was more universally disliked than the present system, or more approved than our conduct in having nothing to do with it. I receive compliments upon it every hour, and the present notion is that some solid system should be made by us to remove the apprehensions of the people and to unite the Royal Family. But this is much more easy to wish than to bring about. It is called a *Ducal Government*. [He had received a request from Mr Legge for a private interview. He must have Lord Hardwicke's advice without which he will not stir one step.] All accounts from the City agree that there is a most extraordinary ferment there upon the present dispositions at Court; they say they look up to us to protect them from the ill-consequences which they apprehend from them....

*Earl of Hardwicke to the Duke of Newcastle*

[N. 185, f. 395.]

WIMPOLE, April 9th, 1757 at night.

MY DEAR LORD,

Your Grace has done me a great deal of honour, and given yourself a vast deal of trouble, in sending me so particular

<sup>1</sup> Thomas Hay, Viscount Dupplin; M.P. for Cambridge; succeeded his father in 1758 as eighth Earl of Kinnoull.

and circumstantial an account of the alterations made and intended in the administration and the circumstances relative to them. It is an amazing scene, precipitated without reason or common sense; but it has proceeded from the same source from which all measures have proceeded ever since October last, and which I fear is impossible to be checked. For throughout this whole transaction the Master of the Family has never adhered to any one idea that has been either suggested by others or conceived by himself, but has been absolutely resigned to one person<sup>1</sup>. I have been told that Horace Walpole said publicly the other day that the Duke of Cumberland was going to command in Germany; held England in commendam and left Mr Fox his Viceroy to command in his absence. And yet I hear that there have been some symptoms within these two days to make one doubt whether H.R.H. will go at all: for that his servants talked much of the difficulties of his getting to the army in Germany or even of forming that army. This would indeed be a very curious supplement to the phenomena of this time—if this precipitate change should have been made to accommodate his departure and yet he should not depart at all.

Lord Winchilsea's acceptance of the station of First Lord of the Admiralty, just at this time, lowers my opinion of his judgment. He would have run less risk in taking the Company of Grenadiers<sup>2</sup>. His Lordship's stricture upon those, who had got immense estates for themselves and their families under the King, was not meant for your Grace but your humble servant. Nobody accuses you of having got an estate under the Crown. I own I have got one by my profession, not an immense but a moderate one.

I am very sorry for the present appearance of the King's disposition towards your Grace; but that is the effect sometimes of the most honest and disinterested conduct and is made tolerable by the consciousness of having done right. It is still in your power to alter this disposition when you shall judge it wise and right to do it. As to myself, I know nothing of a *very gracious*

<sup>1</sup> Duke of Cumberland.

<sup>2</sup> Daniel Finch, eighth Earl of Winchilsea and Earl of Nottingham, K.G., now made First Lord of the Admiralty, an office which he had held before in 1742-4. He had declared that "when those who had for so many years received favours from the King and had got immense estates for themselves and their families, would not come to the King's assistance when His Majesty was in distress, others, when required, must do it," and that "if the King had ordered him to put himself at the head of a Company of Grenadiers he would have done it." (f. 376.)



*reception.* It was literally as I represented it to your Grace in my letter last Sunday night and no better. Whence your relator had the circumstance of the King's looking out for me, when I stood behind in the crowd, I cannot imagine, for there is not one syllable of truth in it. At the Levee there was no crowd, scarce anybody there; and at the Drawing Room I was standing in the first row of the Circle when His Majesty passing said three words to me about my going out of town. But it is easy to guess why such stories are invented, for mere invention this is. Your Grace knows every word that has passed from the King to me, or from me to His Majesty, with the utmost correctness. Not one syllable has ever passed but through my Lord Waldegrave. In all that I declared to his Lordship I adhered to everything your Grace had said, and expressly gave my opinion that nothing could be done till the enquiry was over and towards the end of the Session. Your Grace states it as if I had said, or the King represented I had said, "that if the Duke of Newcastle came in, I would come to the Cabinet Council." Those were not my words, for I perfectly remember that I cautiously avoided naming your Grace that I might not seem to put it upon you. My words were, "When the time shall come that it shall be judged proper for the King to take in his old servants again, etc." And now for Mr Fox's words, that "My Lord Hardwicke had assured the King that he, his family and his friends would support the King's measures." I did say so; but it immediately followed and was entirely applied to and connected with my coming to the Cabinet Council without place or pension. "When the King should recall his old servants," in case no proper place was then actually vacant; for I correctly remember that I used the expression that I should deprecate any person being turned out for me. This is the whole....

I received this day at noon a letter from Lord Anson by his servant, acquainting me that Mr Legge came to him on Thursday in the afternoon. He began by saying that there had been a great mistake committed in the beginning of this winter by his friends and allies not joining with the Duke of Newcastle, and insinuated that this was principally owing to the visionary notions of Mr Pitt.... He then talked how material it was for Leicester House and your Grace to understand one another; that it was much to be wished for the whole in order to defeat immediately (which he said it would effectually do) the scheme now carrying on with so much vehemence. That he wished to see your Grace, and desired Lord

Anson would let you know that he should be glad to meet you at any time and place you should appoint; but it must be contrived so as by no means to transpire....I entirely concur with your Grace in thinking that there can be no objection to your seeing Mr Legge privately and hearing what he has to say<sup>1</sup>....

I now come to consider your Grace's questions....

Your Grace says very truly that no precise answer can be given till you know the manner and terms in which the proposal [about coming into the administration] will be made. If it is upon the plan of the administration as now formed, it will be asking you to stick yourself into an administration entirely chosen and made without you. This seems to me so absurd that I can hardly think any such proposal will be made directly at present. If it should, I am inclined to think that the right and honest way will be to take some proper method of informing the King that no solid plan of administration can be made for him by anybody, that will give him ease and comfort for the remainder of his days,—ease at home or procure peace abroad, but such a one as may, if possible, unite the whole Royal Family and bring *the succession* to support and give quiet to *the possession*. Everything else will be perpetual contest....

What part our friends should act in the meantime? This is certainly attended with difficulties. For my own part, I am determined not to go into a formed general opposition. I have seen so much of them that I am convinced they are the most wicked combinations that men can enter into;—worse and more corrupt than any administration that I ever yet saw, and so they have appeared in the conclusion. Therefore I see no other way at present but to keep off from any absolute engagement with either party (unless some new system should arise out of these overtures), and to oppose wrong measures and concur in right ones, as particular questions shall arise or be foreseen. I am sensible that this is not the political way to keep a party together, but that is not an objection against doing what I think in my own conscience to be right.

<sup>1</sup> Legge had been dismissed from office with Pitt in April, and had shared his popularity and gold boxes and addresses from the Corporations; his change of opinion and visit to the Duke of Newcastle therefore, which appears to have taken place without Pitt's knowledge or consent, had some importance. He returned to his former office of Chancellor of the Exchequer in the new Government, but (probably on this account) was no longer favoured with Pitt's patronage and friendship; he was dismissed in 1761. See also Glover's fantastic account, *Mem.* I. 140-50.

Your Grace observes that throughout the whole of this long letter I have taken no notice of Mr Fox's fine words of "acting under you," "giving carte blanche," etc; and indeed they deserve no notice....

The Solicitor-General and Jack desire your Grace's acceptance of their humble duty, and I am with the most unalterable attachment and affection, my dearest Lord,

Ever yours,

HARDWICKE.

*Lord Royston to the Earl of Hardwicke*

[H. 3, f. 368.]

LONDON, April 9th, 1757.

...I gave a very handsome breakfast and the sight of so many "statesmen's equipages at my humble door," as the Speaker would say, furnished matter for speculation. We were supposed to be settling an administration and that your Lordship was come up incog: to be present and hold the scales between the contending parties....

*Earl of Hardwicke to Lord Anson*

[Sir J. Barrow's *Life of Anson*, 283.]

WIMPOLE, April 9th, 1757.

MY DEAR LORD,

I think myself much honoured by your confidential and material letter of yesterday; for such I was sure it must be upon opening it, since nothing else could have drawn so much writing from your Lordship<sup>1</sup>.... I cannot help being a little diverted at their having found out their *great mistake* at last; which to me, who confess myself but a poor politician, was as obvious in theory, when they committed it, as it is now in the event. This made me say those last words to Mr Pitt with which I left him,—*that, as he was disposed to come into the King's service, and as a man of sense, if he wished the end, must naturally wish the means, why should he then make it impracticable*<sup>2</sup>? And impracticable he has found it in five months time. It is also diverting to see them casting the blame upon one another; but I believe there is some truth in what Mr Legge insinuated to your Lordship, that it was principally owing to the visionary notions of Mr Pitt; and I think these visionary notions much consisted in the support with which he had flattered himself from the Tories....

[On April 15, 1757 (N. 185, f. 419; H. 68, f. 198), the Duke of Newcastle expresses his full agreement with the views stated in

<sup>1</sup> Lord Anson's dislike to correspondence was notorious.

<sup>2</sup> Above, p. 279.

Lord Hardwicke's last letter. He is to meet Mr Legge on Monday next at Lord Dupplin's House, where there is a back door into the Park, at 9 at night<sup>1</sup>. He hopes that Lord Hardwicke will manage to be in town before that to advise him what he shall say. Lord Mansfield had had an interview with the King.] The King then told him that he could no longer bear "those fellows" and mentioned, by way of parenthesis only, the affair in which they had treated him so ill (which I suppose was relative to Mr Byng). His Majesty then said that he was extremely displeased with the Duke of Newcastle to whom he had offered everything; that I had not only refused to come into his service, but even to support those who would; that my Lord Hardwicke had acted very differently, and then (I am sure your Lordship will be surprized), had recourse only to what His Majesty said your Lordship said to him upon quitting the seals, which I remember very well, and was not as His Majesty is pleased now to represent it. The King said that you told him that you left your son (the Solicitor-General), with him as a proof of your duty to him, and that you would support his measures under any administration. I remember very well your Lordship's words were "his public measures," agreeably to the sense in which I had before talked to the King. But indeed, I am almost ashamed to mention these trifles, if it was not to show to what shifts they are reduced and how rightly Lord Mansfield had answered. He told the King that he was persuaded that the reason I did not return to his service was my fear of not being able to do him any real service by it; that he was persuaded your Lordship and I agreed in everything, that we had but one mind and he thought we should always be of one opinion....The King then said, "But why then will not the Duke of Newcastle promise me his support....Will he go into opposition?"—"He will never do anything contrary to his duty and zeal for your Majesty's service."—"But tell me your opinion, if the Duke of Newcastle should go into *opposition*, would the Whigs of the House of Commons follow him?"—"Since your Majesty commands me to tell you my opinion, I think they would."—That was a strong answer indeed and must have an effect. H.M. made no reply....

*Col. the Hon. Joseph Yorke to the Earl of Hardwicke*

[H. 9, f. 112.]

HAGUE, April 22nd, 1757.

MY LORD,

...The scheme which has taken place [the new Ministry]... on a sudden has surprized all the world, but so used is the public to our changes that it is supposed this will not last long....For my own part, I was not so much surprized at it because I was aware that the Duke would not choose to embark in his German campaign

<sup>1</sup> See Dodington's *Diary*, 360, and Walpole's *George II*, iii. 183, for accounts of this mysterious interview. According to the latter they had not even candles.

while the late Ministers were in power, from a notion he had that they would not support him when he was gone....

These frequent alterations occasion such a stagnation in orders that if it did not please God to turn the heads of our enemies at the same time, we should be, I fear, in a very disagreeable position....

[He writes again on April 29 (H. 9, f. 116)] I can't help giving your Lordship notice in confidence that P[rincess] A[melia] writes to her sister [Princess of Orange] by the last post, "The King will never be easy till he has the Duke of N. and Lord Hardwicke again; I don't tell you I like them better than I did, but this is the plain truth."...

*Duke of Newcastle to the Earl of Hardwicke*

[N. 186, f. 1; H. 68, f. 204.]

CLAREMONT, May 1st, 1757.

[Relates the plans and conjectures for the formation of the new Ministry to be constituted by the junction of his own and Pitt's party and proceeds] The principal view of my writing this letter to your Lordship is to lay before you with the utmost sincerity and affection my thoughts with regard to yourself, which I am sure you must forgive, as I shall be extremely wanting in my friendship to you, if I did not do it when things now draw so near. Your Lordship knows my fixed resolution not to come into business but in conjunction with you on whom my chief dependence has ever been and must be. The question then is, in what capacity your Lordship should come? The Great or the Privy Seal can only be in question; for a supernumerary place in the Cabinet for my Lord Hardwicke would be a jest to think of. I have weighed this matter with all the impartiality that I can consider a question; I have given all your objections their full force and I am (and I am sure there is not one man in England, except perhaps of your own family who would differ with me) of opinion that both with regard to the King, the public, your friends and yourself, you should take the Great Seal. There can be no doubt about the three first: never any man was so universally approved by all parties for any one great station as your Lordship confessedly is for the Great Seal. You have no rival, you can have none; and, what is most extraordinary, no one man but yourself can be thought of for it; and if your Lordship does not take it, the King and his administration must want the dignity and support of that great office, and if I am to have any share in the administration, I shall, by your refusal of that station, want a strength which is to me more essential than any the King could give me. Do I not daily see follies and impertinences which can never affect the Great Seal? In your hands it carries an authority which the petulant will fear, and which the most arrogant and the most sufficient will reverence. Consider the question now with regard to yourself and family. More ease, I own, and not much, may be had in an insignificant office; but is that a consideration in the present state of the King and the Kingdom? And as

to that, the business you play with, the attendance may be greatly eased by my Lord Mansfield's officiating in the House of Lords at times and even in the Court of Chancery, whenever you would have him, both which, I am sure, he would readily do, though I have never spoke one single word to him upon the subject. I taste this the more as I myself intend to do something of the same kind. For if I come again into the Treasury, I intend to leave the ordinary business to the Chancellor of the Exchequer and the other Lords; and after having been for near forty years a daily attender at Court, I shall desire the King to permit me to trouble him only twice a week, for I must have some ease and quiet myself. If then, my Lord, your ease and your health can be preserved, consider in what a different light your return to the King's and your Country's service in that or in any other employment would appear. Here all the world wishes you; in any other station, nobody but those who wish well to our Administration and to the conduct of the public affairs in our hands. I shall trouble you no more upon this subject but to assure you most solemnly that I have not said one single word, which I should not think, if your Lordship was as indifferent to me as you are the contrary, and if myself was out of the question. I beg pardon; as to your objection about the rise in the professions, I don't believe there is one single man in the profession (except one of the Lords Commissioners<sup>1</sup>) who don't wish you there...

[On June 1, 1757 [N. 186, f. 186; H. 68, f. 216], the Duke of Newcastle writes to Lord Hardwicke on the difficulties of forming a new administration, and the great objections to including Fox, and proposes to take office himself in order to avoid "greater and more insurmountable difficulties," and to fill up offices later. He had addressed a paper to the King (f. 184) to the above effect.

Lord Hardwicke answers the same day:]

[N. 186, f. 191.]

MOOR PARK, *June 1st*, 1757. Wednesday night.

MY DEAR LORD,

Since I had the honour of writing to your Grace by your servant I have, with as much prudence and deliberation as I am capable of, considered your letter and the papers enclosed in it. After all I find the situation to be so embarrassed; so many things cross my way, which way soever I turn myself, and so many difficulties occur that I cannot satisfy my own mind and conscience, as a faithful servant to the King and a sincere friend of your Grace, in any advice that I may give. The difficulty still rests where it was found to be in October last and where I always thought it would rest, in finding proper persons to carry on with sufficiency the business of the House of Commons, exclusive of

<sup>1</sup> No doubt Lord Chief Justice Willes.

Mr Pitt and Mr Fox. My Lord Egmont has for some time put himself out of that question; but from what I understood from your Grace last Friday night, I thought Sir George Lee and Mr Hume Campbell had been more sanguine upon that essential point. I was glad to hear it, though I must own that notwithstanding the good opinion I have of those two gentlemen, I doubted their forces for it in such a situation, with Mr Pitt an open enemy and Mr Fox not a satisfied, and consequently not a zealous, friend. I perceive now that both these gentlemen draw back as to undertaking the business of the House of Commons independently of Mr Fox, and that others of your Grace's friends are very averse *to the latter's* having anything to do. This has induced your Grace to think of a middle term, to come in yourself at the head of the Treasury, to fill the Southern Department of Secretary of State with Sir Thomas Robinson and to leave all the other offices open at present; for as to the Secretary for both the Indies, I don't look upon that as filling up anything. It is entirely a new thing and may so far do good as it will satisfy my Lord Halifax, to whom nobody wishes better than I do. But all this will do nothing towards filling up the great void in the most important department, the House of Commons. I know myself to be a very bad judge of these affairs; but after the most mature consideration, I cannot advise your Grace to proceed upon this middle scheme. You will set out in a new administration lame and maimed, which, instead of the *solid and stable* administration talked of, will be looked upon by all the world as the weakest possible. In the meantime you will be torn in pieces by solicitation and the jealousies and ill humours arising from it, and be made uneasy by daily inquietudes arising from brigues and intrigues in the Court, whilst this middle state of purgatory subsists. Besides, it will not answer the purpose of having the new writs moved for during this session of Parliament, and the reelections over before another begins. If no entire plan can *now* be formed, it would, in my opinion, be much more eligible for the Duke of Devonshire to continue in the Treasury some time longer and things to remain just as they are....

I always thought that it would become necessary to make up with Mr Pitt or Mr Fox. The former seems to be now out of the case. To the latter there are vast objections, the strength of which nobody can feel more than I do. The reasoning upon them has been exhausted; but if your own mind approves coming in (of which your Grace must now judge for yourself), I would not have you

come in upon no plan at all, for that will be without any strength at all. You say in your paper very honourably, "that there is no consideration which relates to yourself personally which you will not submit to." But as to strength and support as a minister at the head of the King's administration, nothing can relate to yourself personally, that will not relate to and interest the King and the Public. I am, therefore, convinced that it will be necessary for you to settle some plan. Without it, 'twill be all a rope of sand without consistency and without strength, either in reality or even in appearance. Neither can I agree with those who think that leaving all these vacancies will tend to calm Mr Pitt's opposition, unless it could be attended with some probable hopes held out to him that he and his friends should, in some short time, fill them, which I fear the King would not permit, and which the filling up the Secretary's office alone would render desperate....

P.S. I had almost forgot to add that I can never change my opinion about the idea, which your Grace has more than once flung out, that it will be more practicable for you to go out five months hence than to keep out now. I must beg to be forgiven for thinking that it will be much more difficult and liable to more reproaches, both from the King and your friends who depend upon you.

[On Saturday, June 4, 1757 (N. 185, f. 216 and f. 222; H. 68, f. 220), the Duke of Newcastle writes an account to Lord Hardwicke of an interview with Lord Bute, (which had been arranged through the good offices of Lord Chesterfield,)<sup>1</sup> who was well inclined but suggested difficulties. He had arranged a conference between himself, Lord Hardwicke and Pitt at Lord Royston's house for Monday at half past eight and to this Lord Bute was also invited. There were times when Lord Hardwicke's advice was absolutely necessary for him to know what to do, and therefore he begs him to be in town to-morrow. Lord Bute] lamented much (as he said the Prince of Wales did) your Lordship's resolution not to take the Great Seal again. He said (and the Prince of Wales thought the same) that you were the only man proper for it and talked upon your Lordship's subject as I could and always do....

*Lord Mansfield to the Earl of Hardwicke*

[H. 247, f. 39.]

Saturday, 4 o'clock, *June 11th*, 1757.

MY LORD,

I am just come from Kensington where I was by order to deliver the Seal, and Mr Fox was there to receive it. Upon my going in to the Closet the King did me the honour to talk to me of

<sup>1</sup> See H. 68, f. 226.



the present melancholy situation, and bid me tell him what I thought. I did so very sincerely and made a great impression. The result was that I have brought the Seal back and am to speak to the Duke of Newcastle and your Lordship. By good luck I met the Duke of Newcastle at Hyde Park corner. I stopped Lord Rockingham's resignation which I never approved of. He followed me home and now tells me that he stopped the Duke of Rutland. I am this moment going to Guildhall and give your Lordship this trouble to know whether I may wait upon your Lordship, if I get back before half an hour after ten.

I beg your Lordship would not take the trouble to write but to send me word how late I may venture to come, if your Lordship is to be at home to-night. I have the honour to be with the greatest respect,

Your Lordship's most obliged humble servant

MANSFIELD.

*Earl of Hardwicke to Lord Royston*

[H. 3, f. 372.]

POWIS HOUSE, *June 12th, 1757.*

DEAR ROYSTON,

This is a season fertile of new events and extraordinary motions, whether owing to the approach of the comet or not, I can't tell...[Lord Mansfield] attended yesterday noon at Kensington, by order, to deliver up the Exchequer Seal, and Mr Fox was there to receive it, as were the Duke of Bedford, Lord Gower, the Duke of Devonshire, Duke of Marlboro', Lord Winchelsea, etc. to grace the ceremony. Upon his coming into the Closet, the King unexpectedly talked to him of the present melancholy situation, and bid his Lordship tell him what he thought of it. Lord Mansfield told the King 'twas an affair quite out of his province, but if his Majesty commanded him, he would tell his opinion very sincerely and would not deceive him, unless he was deceived himself. He then told the King very plainly that he was of opinion that the scheme he was going upon would not do, could not carry on his affairs but would end in greater confusion. The result was that the King ordered his Lordship to carry the Seal back again with him and speak to the Duke of Newcastle and to me. Mr Fox went into the Closet immediately afterwards, and was surprised to be told this in a whisper as he passed along to the Closet door; and the good Company attending in the ante-chamber were amazed as, you may easily imagine, the whole court was. This new *remora* stopt (as it ought) the Marquis of Rockingham's and the Duke of Rutland's resignations, who were

all attending for that purpose, and the Duke of Bedford went to Woburn yesterday evening, in wrath, as I am told. The King complained and lamented much, and appeared greatly embarrass'd, but spoke well of your humble servant. I went to-day to the Drawing-room at Kensington, where his Majesty (though grave) was very civil to me. He spoke to me twice, and the last question he asked seemed to have some meaning. "Shall you stay in town some days, my Lord?" "Yes, Sir, it is my intention; I shall not go out of town of [sic] some time."—What all this will end in, I cannot foresee. If Mr Pitt etc. take it in a reasonable and candid way, it may have a good effect; if not, these retrograde steps may make them more tenacious of their demands. I am at present at a loss how the negotiation is to be resumed, for no new concession has yet been specified. The Duke of Newcastle will be in town tomorrow morning, and I intend to see him as soon as he comes. Pitt is not yet in town. My most affectionate compliments attend my Lady Marchioness and the dear little girls.

I am

Yours most affectionately,

...

HARDWICKE.

*Duke of Devonshire to the Earl of Hardwicke*

[H. 247, f. 41.]

*June 14th, 1757.*

MY LORD,

Lord Mansfield will at my desire deliver a message from His Majesty to your Lordship and the other persons that met last night, to desire that you will prepare and lay before him some plan of a Ministry that you can agree upon, and that may be able to support and carry on Government. I flatter myself that your Lordship will exert yourself, not only to deliver the King out of the distress he is in, but to prevent both King and Country from being undone, which they must be, if this confusion lasts any longer. His Majesty would be glad to see your Lordship and be informed from you what progress is made in this negotiation, and I must beg you would be so good as to be at Court tomorrow, or else to let me know if anything has passed that the King should be acquainted with, for his impatience is very great. I am, my Lord,

Your Lordship's most obedient, humble servant,

DEVONSHIRE.

*Earl of Hardwicke to the Duke of Newcastle*

[N. 186, f. 309.] LORD DUPPLIN'S, Wed. 3 o'clock. [June 15<sup>th</sup>, 1757.]

MY DEAR LORD,

I am just come from Kensington after having had an audience of about  $\frac{3}{4}$  of an hour. It was very disagreeable and painful in the manner of it; but I hope something good, as far as the situation will admit, may come of it. I shall wait here in expectation of seeing your Grace as soon as possible and am most faithfully and affectionately,

My dear Lord,

Ever yours,

HARDWICKE.

*Duke of Devonshire to the Earl of Hardwicke*

[H. 247, f. 43.]

CHISWICK, Wednesday evening, 9 o'clock,  
[Endorsed by Lord H.] June 15<sup>th</sup>, 1757,  
R[ecieved] when I came home after 12 at  
night.

MY LORD,

I have this moment received a note from the King saying that *he was so much disturbed at the disagreeable situation that he found himself in*<sup>\*</sup>, that he imagines he did not explain his intentions fully to your Lordship, and orders me to insist upon the Pay office for Mr Fox and to have no Secretary at War imposed upon him, but either to keep the present one<sup>1</sup> or to let him name one of his own liking, and that Lord Anson should be at the Head of the Admiralty preferable to Mr Legge; these are exactly his own words which I thought it necessary to communicate immediately to your Lordship. I flatter myself that your Lordship will make the proper use of it, and am with great respect, my Lord,

Your Lordship's most obedient humble servant,

DEVONSHIRE.

I shall be in Town very early in the morning; if your Lordship should have any commands for me, shall be ready to obey them.

\* [Note by Lord H.]: Underneath are the very words of the King's note in the room of those underlined in the D. of Devon's letter: "When Lord Hardwicke was with me to-day, I was so heated and in such passion——" (f. 45).

<sup>1</sup> Lord Barrington.

*Duke of Newcastle to the Earl of Hardwicke*

[H. 68, f. 234.]

NEWCASTLE HOUSE [June, 1757].

[He has had several interviews with Pitt, with which he is on the whole satisfied. But Pitt declared that he could not come in unless Pratt were Attorney-General.] That must be now done or all is *certainly* undone....

My dear Lord, I am in great distress: difficulties from all quarters, many of which can be removed only by your Lordship, upon which I always depend. I must see your Lordship this evening....

*Earl of Hardwicke to Mr Pitt*

[Chatham Corresp. i. 230.]

POWIS HOUSE, June 16th, 1757.

SIR,

I am to desire, in the Duke of Newcastle's name, as well as my own, that we may have the honour of meeting you and Lord Bute at your house this evening a little before nine. I have in like manner sent notice to Lord Bute. I found the Duke of Newcastle pleased in the highest degree, with your visit and conversation this fore-noon.

I am with the great respect, Sir,

Your most obedient and most humble servant,

HARDWICKE.

*Earl of Hardwicke to H.M. the King*

[H. 247, f. 46.]

Friday, June 17th, 1757.

I fully intended to have had the honour of laying myself at your Majesty's feet this day; but certain difficulties, not yet quite removed, would render it a fruitless trouble to your Majesty at present. I will not fail to have the honour of attending your Majesty to-morrow, if you will have the goodness to permit me; and, in the meantime the Duke of Newcastle and I will exert our most sincere and zealous endeavours (as we have hitherto done) to procure your Majesty the utmost satisfaction, that the present very disagreeable situation will admit.

[On June 18, 1757 [H. 68, f. 236] the Duke of Newcastle writes to Lord Hardwicke to urge him to remove from the King's mind the resentment occasioned by his refusal to take office with Fox. It would be impossible for him to continue in the administration under the continual marks of the King's displeasure.]

*Earl of Hardwicke to Lord Anson*

[Add. 15956, f. 36 ; H. 247, f. 49.]

POWIS HOUSE, *June 18th, 1757.**Saturday night, 11 o'clock.*

MY DEAR LORD,

You will probably be surprized at receiving this letter from me by the King's Messenger, but it will make me more happy than ever I was in my life if the subject of it shall be as agreeable to your Lordship as it is to me. You have heard how the administration, projected under Mr Fox, failed this day sev'nnight, in the very moment it was to have been carried into execution, and he was just going into the Closet to receive the Exchequer Seal. On Tuesday night the King, by the Duke of Devonshire, ordered me to attend him on Wednesday morning. I have since had the honour of several audiences of His Majesty, some of them most uneasy and painful ones, though without any anger towards me. My first orders were for the Duke of Newcastle and myself to negotiate some settlement of an Administration with Mr Pitt and his friends under certain restrictions, from which His Majesty declared he would never depart. In the course of my audience, I told His Majesty that I could take no part at all, unless some honourable regard was shewn to your Lordship, though I could not just then point out the particular thing; that I had told the gentlemen with whom we had conferred the same thing and had formerly humbly conveyed it to His Majesty. In his subsequent discourse the King, in aggravating the inconveniences that would arise from this new plan, told me with warmth, that resignations had been talked of; that, in the way we were going there would be resignations enough; that my Lord Winchilsea was in the next room in order now to come into his Closet to resign. The convenience of this struck me, but I reserved myself. Some minutes afterwards the King read over my list in heat, objected to Mr Legge being made a Peer and first Lord of the Admiralty, was determined not to do two great things for one man at the same time, and in this he was peremptory. I then threw your Lordship in his way, but that I was far from knowing what the other persons would say to it. His Majesty answered quick, "I shall like it extremely."

When I stated this to the Duke of Newcastle it made him most happy, and I reported it at the meeting of all four in the evening. I stated it, as it was in reality, as the King's option. My Lord Bute and Mr Pitt received it with the greatest politeness. Lord

Bute first broke the ice, declared his particular respect for your Lordship, and did great justice to your character and merit in your profession, and declared that he knew these to be the sentiments of the place to which he belonged. Mr Pitt said he only waited to hear what Lord Bute would say, and most readily concurred in the same sentiments. In short it ended so that all the four plenipotentiaries agreed that your Lordship should be again at the head of the Admiralty, if the King continued in the same mind, and Mr Legge have his old office of Chancellor of the Exchequer which he had professed to like better than any other place.

I have been negotiating ever since upon other points and have led a most fatiguing life. However, at last the whole was settled and I carried the King the plan in writing this day at noon. The three things which the King had made his *sine qua nons* were 1. That he would perform his promise to make Mr Fox Paymaster. 2. That there should be no change in the Secretary of War. 3. That Lord Anson should be at the head of the Admiralty. When I told His Majesty that we had carried all this for him and that all those points were most dutifully yielded up to his pleasure, I never saw such a change in man. He said at once, with a gracious smile, "Then this thing is done; and, my Lord, I thank you heartily." He is in haste to carry it into execution immediately, and indeed it must be in a few days.

I can't send your Lordship the plan, for the King kept the original and I have yet no copy. The great lines are Mr Pitt Secretary of State, Lord Temple to have a Cabinet Council place, the Duke of Newcastle First Lord of the Treasury, your Lordship at the Head of the Admiralty, and Mr Fox Paymaster. Thus your Lordship is once more called to this great office by the King's earnest desire, the united voice of all parties and the concurrence of Savile House<sup>1</sup>, though that must not be talked of. In other circumstances you might possibly not so well like the company you are to sit with\*, which are those who were turned out at Easter. You

<sup>1</sup> The Prince of Wales's party. Savile House, adjoined and communicated with Leicester House.

\* Lord Anson, Boscawen, West, Forbes, Hunter, Elliot, Hay.

[Temple West (1713-1757) had been second in command of Byng's fleet. He was appointed to the Admiralty in November 1756, under his cousin, Lord Temple: he gave evidence against Byng at the court-martial, but objected to the 12th article, refusing to "serve on terms which subject an officer to the treatment shown to Admiral Byng," and resigned, but almost immediately afterwards resumed office.

Hon. John Forbes (1714-1798), second son of the third Earl of Granard, had been

know that Mr Pitt etc: always made restitution their point, and wanted to provide for those friends who were of that board, so there was no possibility of altering that. But I hope, in the present situation, you will make no difficulty or hesitation about it. Indeed, my dear Lord, this unexpected event, which I have used some honest dexterity in bringing about, is the greatest thing for the King's honour, for the credit of his old administration, and for your own honour. It does, by their own admission, give the lie to all the calumnies that have been raised. It contradicts all that had been said upon the enquiry\* and confirms the issue of that enquiry to be a total justification. The King sees it in that light and therefore is prodigiously pleased with it. This is the true light wherein it is to be seen, and the unanimity of the Royal Family upon it, is a most happy and inviting circumstance, and will, I am confident, induce your Lordship to overlook all other circumstances which a little time and opportunity will correct. I have privately laid in with Lord Bute and Mr Pitt that some one of their people may be changed upon being otherwise provided for, and they have agreed to the reasonableness of this. You know the Duke of Newcastle had formerly promised Mr Stanley<sup>1</sup>, who may be useful to you in the House of Commons; so will Elliot<sup>2</sup>, who, I dare say, will in six weeks be as much yours as theirs. Besides, I am told that Admiral Forbes is likely not to accept<sup>3</sup>, and, if so, it will make room for Sir Edward Hawke or any other man we shall like.

This is the state of the case, and when I look back I stand amazed at the sudden change. All our friends are in raptures with it, the Court in general pleased, and the Town more. It is looked upon as the strongest administration that has been formed many years, and by good conduct may become so.

I am glad to hear that the waters have agreed with your Lordship, but you must interrupt them for a few days; and, in obedience to His Majesty's commands, set out immediately and be in Town as soon as you can without hurting your health in this hot weather. I am to see the King on Monday, who will ask me if I have sent for you.

appointed to the Admiralty in December 1756. He refused to sign Byng's death warrant and resigned in April 1757, now reappointed.]

\* [Added in the MS. draft:] Though we don't openly talk that style yet.

<sup>1</sup> Hans Stanley (c. 1720-1780), M.P. for Southampton, made a Lord of the Admiralty in September; afterwards (1761) agent in Paris to conduct the negotiations for peace.

<sup>2</sup> Sir Gilbert Elliot, third Baronet (1722-1777), poet and philosopher; M.P. for Selkirkshire; now a Lord of the Admiralty and a follower of Pitt.

<sup>3</sup> He, however, accepted and held office till 1763.

The Duke of Newcastle sends your Lordship his most cordial compliments and congratulations. Both his Grace and I and all your friends entreat your Lordship to make no difficulties and to let us see you as soon as you can in health. The messenger waits and will bring you a letter from dear Lady Anson, who knew not one word of this matter, till I had settled it finally with the King this day. Adieu, my dear Lord, and believe me to be most affectionately ever yours,

HARDWICKE.

The Duke of Devonshire is vastly pleased with what relates to your Lordship. I have reason to think Fox is not displeased at present....Lady Hardwicke and all our friends of this family send your Lordship their affectionate compliments and congratulations. Send an answer by the messenger.

*Earl of Bute to the Earl of Hardwicke*

[H. 75, f. 235.]

June 20, 1757.

MY LORD,...

My duty to my Prince (whose warm inclinations to the King and this country I am well acquainted with) directed my conduct; and whatever success my poor efforts may have had, that ought in justice to be imputed solely to the excellent dispositions of the young Prince I am devoted to; but indeed, my Lord, all this is the work of your own hands. Your great abilities, your generous and open manner, thro' the whole of this negotiation has, I am persuaded, brought things to the best issue they were capable of. I shall ever retain the highest sentiments of your Lordship's conduct and do very sincerely desire your Lordship would look upon me to be with the greatest respect,

Your Lordship's most obedient, humble servant,

BUTE<sup>1</sup>.

*Right Hon. William Pitt to the Earl of Hardwicke*

[H. 75, f. 185.]

Wednesday, 6 o'clock, June 22nd, 1757.

MY LORD,

Finding from the Duke of Newcastle's representations of things to-day at Kensington that they were neither better nor worse in their general state and that particulars were as unripened for execution as ever, I have declined troubling his Grace and your

<sup>1</sup> For Lord H.'s letter, congratulating and praising Lord B.'s conduct in the negotiation, H. 75, f. 234.



Lordship with a meeting this evening, as seeing no fruit from deliberation when nothing remains but execution. The Duke of Newcastle proposes meeting at his house to-morrow night at nine o'clock, where I shall have the honour to attend your Lordships in the hope that something will have been finally settled in the course of the forenoon, relating to the essential and indispensable parts of a mutilated, enfeebled, half-formed system, which is every hour blown upon and brought into discredit. I am just going to sleep at Hayes, and will return to have the honour of receiving your Lordship's commands at Newcastle House in the evening.

I find abundant reason to expect much uneasiness and many dangers to encounter in the further progress of the plan; I have to fear from many quarters, and to hope principally from one, from the candour, wisdom and steadiness of him, to whom I have the honour to subscribe myself with the greatest respect, my Lord,

The most obedient and most humble servant,

W. PITT.

*Earl of Hardwicke to the Duke of Newcastle*

[N. 186, f. 389.]

POWIS HOUSE, *June 25, 1757.*

...I went to Kensington this forenoon, when I found the King very grave and thoughtful, but calm and civil. His Majesty began with me and talked of the news from his son: that he had found it necessary by the advice of all the Generals to cross the Weser, lest the French should get behind him and cut him off from that passage, which they were endeavouring; that some of the French Hussars had attacked the Duke's rearguard and that about 20 men had been killed on our side and near 200 of the enemy, but that in this skirmish one or two officers had been guilty of some neglect, that none of his own troops had misbehaved, but that he had sent orders to H.R.H. to have the officers tried by a Court Martial. The King lamented the state of things; said he had endeavoured to save his Country from being the seat of war, but now he had found it would become so. From hence I took advantage to say that, though I hoped this would be retrieved, yet the worse face things wore abroad, the more necessary it became for his Majesty to expedite the settlement of an administration at home. He said that that was what he wanted to do and thought it only waited for the arrangement of the Great Seal, and referred to what your Grace had said to him yesterday. I told the King what had passed between me as a private person, without committing his name, and all the persons concerned, and repeated to him verbatim the terms

insisted upon by Lord Chief Justice Willes<sup>1</sup>. The King of himself scouted the last alternative proposition as not at all easing him in the terms, and as only meant to reserve to himself the option of keeping the Common Pleas with his peerage, and besides that, it would not answer the intentions of the people we treat with. He added that he was peremptorily determined not to confer peerage with it. The King then asked what Sir Robert Henley would do....

I have since seen Mr Attorney General<sup>2</sup>, who speaks as reasonably and as honourably as a man can do, and thinks himself greatly obliged to your Grace and me for the protection which he has received....I really think his request of £1500 p. annum pension, provisionally only, is as low as could be expected, if anything was to be asked....I desire also that your Grace will in the course of to-morrow send me your thoughts upon Sir R. Henley's proposal, for I must go to Kensington on Monday and get into the Closet as early as I can. My present opinion is, that the King will agree to Sir R. Henley's request, for I think he likes him better than the other, and that this disagreeable news has made him more in earnest and in haste to settle things at home. If this shall be settled on Monday, I see nothing that should hinder your beginning to kiss hands on Tuesday<sup>3</sup>.

Thus far things have gone and I know no more, except what Lord Dupplin told me by your order about my Lord Halifax, on which much cannot be built; but if he would look upon being

<sup>1</sup> Willes insisted on a peerage with a pension of £2000 a year, or, instead of the pension, to keep his present office as well as the Great Seal and retain it after two terms, if he resigned the Great Seal. H. 247, f. 55; H. 68, f. 240; N. 186, ff. 379, 383.

<sup>2</sup> Sir Robert Henley (c. 1708-1772), M.P. for Bath; a member of the Leicester House party; K.C. 1751 and Attorney General in November 1756. He was a successful lawyer, but rough and undignified, a hard drinker and a hard swearer, and was nicknamed "Tom Tilbury" and "Surly Bob." The second Lord Hardwicke writes of him: "This was one of the most ungrateful, unfeeling men breathing, and if anybody had foretold in 1755 that he would have been carried higher in emoluments and as high in honours as my Father, the prophet would have been thought a madman." (H. 286, f. 239.) He presided as Lord Keeper and a commoner in the House of Lords till 1760, when he was created Baron Henley, Lord Chancellor 1761, Earl of Northampton 1764. In 1766 he received further emoluments in the shape of a pension and the reversion of the hanaper, and was made Lord President of the Council.

<sup>3</sup> Cf. Rigby to the D. of Bedford, June 28, 1757, as a specimen of the silly falsehoods disseminated by the disappointed faction: "I was told yesterday, as a great secret, the Duke of Newcastle and Lord Hardwicke had quarrelled violently upon the disposal of the Great Seal, and proceeded to coarse language with each other." *Bedford Corresp.* ii. 256, also 259.

called to the Cabinet Council as a bridge, I am entirely for making it for him<sup>1</sup>.

I shall write this night to Mr Pitt to give him a general account of the state of the affair of the Great Seal, and heartily wish that was over, that I may be out of this state of *amicus curiae* and a courier. But I shall, as long as I live, continue in the unalterable state of being, my dearest Lord,

Ever yours,

HARDWICKE....

*Earl of Hardwicke to the Right Hon. William Pitt*

[H. 247, f. 57; *Chatham Corr.* i. 233.]

POWIS HOUSE, June 25th, 1757.

[Repeats the account of his interview with the King on the subject of the disposal of the Great Seal and continues:]

If the affair of the Great Seal should be settled on Monday in the person of Sir Robert Henley, as I conjecture it will, I see nothing that can obstruct your beginning to kiss hands on Tuesday. For God's sake, Sir, accelerate that, and don't let any minutiae stand in the way of so great and necessary a work. I long to see this scheme executed for the King's honour and repose, the harmony of his Royal Family and the stability of his Government. I have laboured in it zealously and disinterestedly, though without any pretence to such a degree of merit as your politeness and partiality ascribe to me. I see with you that attempts are flying about to tarnish it; but, if it is forthwith executed on this foot, those will all be dissipated in the region of vanity, and instead of a *mutilated, enfeebled, half-formed* system<sup>2</sup>, I am persuaded it will come out a complete, strong and well-cemented one to which your wisdom, temper and perfect union with the Duke of Newcastle will give durability. In all events, I shall ever retain the most lively

<sup>1</sup> George Montague Dunk (1716-1761), second Earl of Halifax; President of the Board of Trade and Plantations 1748, in which he had shown great activity. He desired the extension of his office to a Secretaryship of State for the Colonies, and, being refused, now resigned, but accepted his old office again soon afterwards. Dodington's *Diary*, 353; Walpole, *George II* (1847), iii. 34. See also the Heads of a Paper, by Lord Halifax, relating to the defence of the American Colonies of April 1754, H. 565, f. 65. "A great deal," writes the second Lord Hardwicke, "was done at different times to gain and soothe my Lord Halifax, but I never remember him at a pinch of the least use to my Father or D. of N." H. 69, f. 80.

<sup>2</sup> Pitt's own expressions. See above, p. 407.

impressions of your great candour and obliging behaviour towards me, and continue to be with the utmost respect, dear Sir,

Your most obedient and most humble servant,

HARDWICKE\*.

[On June 26, 1757 (H. 68, f. 244), the Duke of Newcastle "joins in the common thanks" to Lord Hardwicke for bringing the negotiations to a successful conclusion.

On June 26, 1757 (H. 75, f. 188), Pitt writes to Lord Hardwicke urging strongly the immediate appointment of Sir Robert Henley to the Chancellorship on his own terms, and "that Mr Pratt may be immediately appointed Attorney-General," and deprecating any delay in forming the administration which every hour became more distasteful and every hour more necessary, concluding with an expression of his own forebodings and fears alleviated only by his single hope and confidence in Lord Hardwicke†.

On July 4, 1757 (H. 247, f. 63; Phillimore's *Mem. of Lyttelton*, 591), Lord Hardwicke replies to Lord Lyttelton<sup>1</sup>, who had obtained his peerage through his support, but who had not been included in the new ministry, repeating the history of the transaction and endeavouring to remove from Lord Lyttelton's mind his sense of disappointment and resentment against the Duke of Newcastle, by explaining the necessity of leaving out many adherents of the party from the administration. He had himself submitted to personal sacrifice:] I gave up for my son Charles a point of professional honour, by letting Mr Pratt be put before him as Attorney-General, in order to finish, and to prevent things training into a length which the circumstances of the King's affairs would not endure....Happy it is that they were settled before the bad news came of the King of Prussia's defeat [at Kolin], which I only refer to and cannot bear to enlarge upon. Had the King then remained without any ministry at all, it would have vastly increased his inquietudes and caused the greatest confusion: and besides, I fear the terms of the new settlement might have been greatly raised. Indeed the fear of some bad success was one material ingredient in me to hasten to a conclusion; and I was further of opinion that it was necessary for his Majesty's service to constitute his administration of such persons and to put

\* In this affair my Father acted rather too disinterestedly, for there was not the shadow of a pretence to put Pratt before my Brother. H.

† Pitt had then nothing in his head but to make Pratt Attorney General. H.

<sup>1</sup> His letter, H. 247, f. 53.

so much of the popular mixture into it, as might be able to sustain some bad success, at least for the present. I say for the present, for what is unsuccessful can never be long popular<sup>1</sup>....

*Col. the Hon. Joseph Yorke to the Earl of Hardwicke*

[H. 9, f. 151.]

HAGUE, *July 5th*, 1757.

...The whole world does justice to your Lordship's conduct and disinterestedness in this important crisis....The Princess Royal, who is still in the Country, has ordered me to return her compliments to your Lordship "and to tell you how glad she is to have a friend like you in the King's Council, but that she does not despair to see you have a greater part in the conduct of affairs." To this H.R.H. adds that "she thinks me very happy to have such an example, not knowing a worthier man to his King and Country than your Lordship, of which you have given new proofs in times when you alone play a part that may be examined by the rigidest eye."

...As to England abstractedly, our point should be to keep alive the diversion against France, for whether *beat* or *beaten*, it is a very important affair for us to make France spend upwards of 20 millions sterling in a year, an expense she must soon grow weary of, and which, without the King of Prussia's assistance, she would not make, at least it would all be employed directly against us.

I hope, therefore, we shall not be too much cast down, for we had better lose ten battles in Bohemia than one province in America....

*Lord Lyttelton to the Earl of Hardwicke*

[H. 247, f. 65.]

HAGLEY, *July 7th*, 1757.

MY LORD,

I have a thousand thanks to return to your Lordship for having writ me so long a letter in such busy times. For though you are not in the administration, I thank God you are not out of business. The loss would have been too great to the public if you had; but I know you will be consulted by the Duke of Newcastle, and, I hope, by the new ministers, as much as if the Great Seal was still in your hands. And, indeed, though I entirely agree with your Lordship that in the present state of things some popularity is necessary in the administration, there is still more need of wisdom. Nor are these times that will allow your Lordship to retire from

<sup>1</sup> Another letter on the same topic to the Earl of Morton, H. 101, f. 82.

the service of your Country. Your moderation and prudence make you decline coming into employment; but your virtue will forbid you to withhold from the King the benefit of your counsels.

As for me, my Lord, I am at liberty to enjoy that retreat which my own temper makes agreeable and which your Lordship's friendship has made honourable to me....

[He intends continuing his history of Henry II; which he hopes to finish in two years' time. He congratulates Lord Anson on his restoration to the office of which "no other man in the kingdom was capable\*."]

\* How unfortunate has this worthy and ingenious man been in private and public life, and where will it end! [added later]: It has ended by a death much lamented by his friends, 1763 [*i.e.* 1783]. N.B. Lord Lyttelton had great reason to complain of the D. of Newcastle's gross neglect. H.

## CHAPTER XXVI

### LORD CHANCELLOR 1737-1756

"Certainty is the Mother of Repose, and therefore the Law aims at Certainty." Lord Hardwicke in *Walton v. Tryon*.

WE must now make some endeavour to realize and describe the great judicial work which, like so many other movements of vast influence, had developed silently and unnoticed amidst the turmoil and preoccupation of politics. During the long space of these twenty years the Chancellor had been so prominent and busy a member of the Cabinet, and his political life seems so full and so rich in incident, that it is astonishing to find after all, that his chief interests and activities were not centred in the scenes which we have described in earlier pages but in Westminster Hall, where under his guidance had been initiated, developed and completed a great transformation in the law, one of the most remarkable in all English history and which, by its creative, expansive and philosophical character, has had the most striking and lasting influence upon English jurisprudence throughout the whole empire.

The first impression derived is one of its bulk, of the enormous labour which must have been expended in dealing with the Chancery work at that period, simultaneously with the Chancellor's political preoccupations and duties. Taking the two years 1745-7 for example, years of civil war, disturbance and anxiety, in which it might have been supposed that the Chancellor's judicial work would have been interrupted and delayed by his functions as a leading member of the Cabinet or as Regent, we find a huge mass of business disposed of, consisting of 380 causes, 179 bills of exceptions and equity reserved, 13 rehearings and appeals, 59 pleas and demurrers, 376 petitions, and 7556 motions, besides bankruptcy and lunacy, and Privy Council cases and appeals in the House of Lords. We shall return to this subject in a later paragraph, when we shall have to consider the grave charges brought against the Court of Chancery, its delays, expense and denial of justice, how far they

were justified, and whether they extended to the administration of the Court in the time of Lord Hardwicke. But before passing on to attempt to grasp the full significance of his work in equity it will be convenient to form some conception of the office, powers and jurisdiction of the Lord Chancellor, and of the nature of equity as administered in his Court and as opposed to the common law.

# I

The Lord Chancellor was one of the few great officers of state, the history of whose functions could be carried back to remote antiquity, and whose powers, at the same time, in their full exercise, survived till modern times. Attached to his office were all the prestige and veneration which belong to things of which the origin is not known, and of which the nature cannot be subjected to analysis and criticism. Such institutions, if traced back to a certain distance, are then lost in the mystery of the unknown, are incapable of logical explanation, and are found to rest chiefly on natural sentiment. The Law of England itself inspired a reverence and veneration hardly less profound than if it had been delivered by the Almighty Himself amidst the thunders and lightnings of Sinai. It owed its influence and its authority over men, and it owes them still, chiefly to the fact of its antiquity, to its quasi-divine nature, and to the impossibility of attributing its invention to any individual human agency. Much of this reverence for the Law itself was extended to the judicial office, and especially to the Head of the Law. It is true that as far as rules and precedents were established, the Lord Chancellor in his equity jurisdiction administered law mostly of recent origin, frequently the work of his immediate predecessors. But when such guidance was wanting he was supposed to consult his conscience and to draw his inspirations from the eternal wells of natural and divine justice. He appeared thus not only *primus inter pares* as Head of the Law, but raised to a higher plane than the rest of the Judges, whose duties were considered to be confined to the strict interpretation of the common law. There was only one other great officer, besides the Sovereign himself, namely, the Archbishop of Canterbury, who rivalled the Chancellor in dignity, and who claimed and received for the same reasons equal veneration and respect; and the supremacy of these two great subjects over all others was well marked in the outward pomp and ceremony which attended their tenure of office, and which were not observed in the case of other ministers of state. In



order of precedence the Archbishop, and next the Chancellor, went before every man in the kingdom, except the royal family. The Chancellor on all public or ceremonial occasions was preceded by a procession consisting of the bearer of the Purse containing the Great Seal, and various other officials and retainers. He was especially named with the Treasurer and Judges in the famous Treason Act of Edward III, and it was high treason to slay them in the execution of their duty. As in the case too of the Sovereigns of England and of the Archbishops, a long line of great and distinguished men had carried on as Chancellors the splendid traditions of justice and governance from the remotest times. While much of the security and prosperity enjoyed by the nation was owing to the wisdom and firmness of its Sovereigns and to the spiritual influence of the Church, much also was due to the just administration of the Law and to the great Chancellors, who had exercised actively and wisely their high office, and had left it to their successors with undiminished powers, and with authority enhanced by their great fame and services.

The source of the equitable jurisdiction of the Chancellor was without doubt the inherent right in the Sovereign to hear appeals from his subjects and to do justice at his discretion, a right which in the course of time was naturally delegated to the Chancellor as the King's secretary and as keeper of his conscience. But the manner and period in which the Court of Chancery was established have remained to some extent in obscurity<sup>1</sup>.

According to Lord Hardwicke himself, its origin was the necessity for applying to the Chancellor for all writs upon which to found actions at common law. When cases came before him for which no remedy at common law was afforded—and these in early times must have been exceedingly numerous—he adjudicated upon the matter himself, as the representative of the King, the great fountain of all justice<sup>2</sup>. Such a beginning would soon lead

<sup>1</sup> See W. G. Holdsworth, *History of English Law*, i. 196 sqq.; F. W. Maitland, *Equity*, 2-11.

<sup>2</sup> p. 551, but he had for many years held the same opinion. It occurs in the *Discourse of Judicial Authority* of 1728 (Preface, cxi.), and again as early as his argument in the great case of *Rex v. Hare* at the very beginning of his career, when he was only a private barrister. After combating the false notion that the equity jurisdiction of the Chancellor was an "usurpation or encroachment upon the common law," he said on this subject (1 Strange, 150): "The Chancery being, upon the division of the King's Courts, naturally the *officina justitiae*, from which all original writs issued, and where the subject was to come for remedy in all cases, the Chancellor was applied to in all cases for proper writs where the subject wanted a remedy for his right or

to considerable developments, and would explain the separation of the equity and common-law jurisdictions, peculiar to England, and which had such far-reaching consequences.

The jurisdiction of the Chancellors and the application of equity rapidly increased and extended, but it would be outside our province to follow the exact steps and stages of their development. The Court of Chancery was regularly established in the reign of Edward III<sup>1</sup>. It administered justice in cases outside the common law, in cases where the common law was unable to act owing to the incompetence of the law or the violence of the times, and in cases affecting the interests of the Sovereign. Under the ambitious and powerful Wolsey there took place a large increase of jurisdiction, and an encroachment upon the common law, which aroused great clamour and hostility against the Court. During the reign of James I the rivalry between the courts of equity and common law culminated in the famous and dramatic dispute between Lord Chancellor Ellesmere and Lord Chief Justice Coke on the definite point, whether a court of equity could give relief against a judgment at common law. This very important question was settled in favour of the Court of Chancery, and the right of the Chancellor to issue injunctions to stay and interrupt the proceedings in the courts of common law was ever afterwards maintained.

The Chancellor's jurisdiction in Lord Hardwicke's time, though in some respects modified and curtailed, and adapted to the more modern conception of the state consequent on the Revolution, was perhaps, as a whole, more far-reaching and powerful than it had been even in earlier periods. Very little remained of his former criminal jurisdiction. A heavy and responsible duty, indeed, devolved upon Lord Hardwicke and upon every succeeding Chancellor till the accession of Queen Victoria, of examining the

redress for a wrong that had been done him. But in the execution of this authority, he was confined by the rules of the common law, and could award no writs, but such as the common law warranted. Therefore when such a case came before him, as was matter of trust, fraud or accident (which are the subjects of an equity jurisdiction), the Chancellor could award no writ proper for the plaintiff's case, because the common law afforded no remedy. Upon this it is not improbable that the Chancellors, who were mostly churchmen, men of conscience, when they found those cases grow numerous, in order to prevent the suitors from being ruined against right and conscience, and that no man might go away from the King's Court without some relief, summoned the parties before them, and partly by their authority, and partly by their admonitions, laid it upon the conscience of the wrongdoer to do right." See also Story, *Equity Jurisprudence*, 25-32. Another source of the Chancellor's jurisdiction was the practice of registering deeds before him, another his presence as a great officer of state in the King's Council.

<sup>1</sup> D. M. Kerly, *Sketch of the Court of Chancery*, 4; Holdsworth, i. 198.

Recorder of London's long list of persons convicted of capital offences, and of deciding which offenders were proper subjects of the King's clemency<sup>1</sup>.

To Lord Hardwicke also it fell to preside at the trial of the rebel peers; but this high function, though it was usually performed by the Chancellor, must be considered as pertaining not to his office but to that of the Lord Steward. And the great powers, which the Chancellor formerly exercised as a criminal judge, arising from his office as president in the Star Chamber, had long ago disappeared with the abolition of that court, while the large number of ancient statutes regulating or increasing the Chancellor's criminal jurisdiction had become obsolete.

On the other hand, his powers had been considerably extended by Acts of Parliament, and by special delegations of authority from the Crown<sup>2</sup>. Such Acts of Parliament were the various statutes in Bankruptcy<sup>3</sup>, of which the first of a long series was 34 & 35 Henry VIII, c. 4 (1542), which gave to the Chancellor, the Chief Justices and others, authority to distribute the property of the bankrupt among the creditors. Before the time of Lord Hardwicke, however, the cases appear to have been decided by the three Commissioners appointed according to the Act of Queen Elizabeth by the Chancellor, without giving him any further trouble<sup>4</sup>. It is said that there were not twenty appeals from their decisions before his Chancellorship<sup>5</sup>. A great increase of bankruptcy cases then took place, chiefly in consequence of the great expansion in trade, which began at that time, and especially as a result of the Statute 5 George II, c. 30. Lord Hardwicke greatly enlarged this part of his jurisdiction. "Reported decisions show that 20 years after the passing of the Act of 5 George II, Lord Hardwicke thought proper to adjudicate, upon petition without bill filed, almost every question that now comes under the cognizance of the Chancellor sitting in bankruptcy<sup>6</sup>."

<sup>1</sup> Cooper, *A Brief account of the Court of Chancery*, 49.

<sup>2</sup> Maddock, *Treatise on the Court of Chancery*, ii. 784 sqq.

<sup>3</sup> Holdsworth, i. 256.

<sup>4</sup> Cooper, 248.

<sup>5</sup> Sir Samuel Romilly in the House of Commons, February 15, 1813. *Parl. Deb.* xxiv. 540.

<sup>6</sup> Cooper, 250, where the writer blames this jurisdiction as an usurpation; full justification for it, however, can be found in the general principles of equity governing the Chancellor's jurisdiction; see also Holdsworth, i. 257, and Ed. Green, *Spirit of the Bankrupt Laws* (1767), the whole of which work is scarcely more than a treatise on Lord H.'s decisions.

By the Act 25 Henry VIII, c. 19, an appeal was allowed from the courts of the Archbishops to the Chancellor. He decided the question whether it was a case in which an appeal would lie, before he issued the commission appointing the Court of Delegates<sup>1</sup>. The administration of charities, in like manner, by the Act 43 Elizabeth, c. 4, was placed under the jurisdiction of the Lord Chancellor and the Chancellor of the Duchy of Lancaster, and abuses were inquired into and rectified by commissions issued by them, and which remained subject to their review<sup>2</sup>. The Chancellor's powers under this heading were very extensive, and, according to Lord Hardwicke himself, he was "not confined to the proper or formal methods of proceeding requisite in other cases<sup>3</sup>." By the Act 22 & 23 Charles II, c. 15, s. 12, the Chancellor was empowered, on the refusal of the Lord Mayor, to make assessments of tithes in the City of London<sup>4</sup>. By Statutes passed in William III (11 & 12, c. 4), and Queen Anne I, c. 30, the Chancellor was given control in certain circumstances over the children of Jewish or Roman Catholic parents<sup>5</sup>. By the Act 7 Anne, c. 12, those exciting any persons against ambassadors or their dependents were liable to punishment by the Chancellor and the Chief Justices, and by 6 Anne, c. 18, the Chancellor was authorised to order the production of tenants for life, whose decease was suspected, upon affidavit of the claimant to the estate<sup>6</sup>. The right to traverse the King's title to freehold or inheritance was also by several statutes only obtainable by petition to the Chancellor, who must be satisfied, before granting leave, of the substance of the claim<sup>7</sup>. Acts of Parliament had also delegated to the Chancellor the choice and removal from office of the Justices of the Peace<sup>8</sup>. Lastly, by Lord Hardwicke's own Marriage Act, 26 George II, c. 33, the Lord Chancellor was constituted, on failure of their natural guardians, the authority to approve or disallow the marriage by license of persons under age<sup>9</sup>. The most important jurisdiction delegated by the Crown to the Chancellor was that over idiots and lunatics, entailing the duty of providing for the care and maintenance of their persons and estates<sup>10</sup>. To the Chancellor, in addition, as representative of the Sovereign as *Pater*

<sup>1</sup> Maddock, ii. 781.

<sup>2</sup> *Ib.* ii. 834.

<sup>3</sup> In *Att. Gen. v. Speed*, West, 493.

<sup>4</sup> Maddock, ii. 837 sqq., where decisions of H. are quoted.

<sup>5</sup> *Ib.* ii. 843.

<sup>6</sup> *Ib.* ii. 845.

<sup>7</sup> *Ib.* ii. 854.

<sup>8</sup> *Ib.* ii. 853.

<sup>9</sup> *Ib.* ii. 847.

<sup>10</sup> *Ib.* ii. 856; Holdsworth, i. 261 sqq.; see for instance the case of *Ex parte Barnsley* before H. in 1744 (Atkyns, iii. 168 and 184).

*Patriae*, fell the great responsibilities of protecting infants and their interests, even, if necessity arose, in the lifetime of their parents<sup>1</sup>.

Next, by the common law, the Chancellor was invested with various powers. All original writs, including those for summoning Parliament, were issued by him. He was a Conservator of the Peace, and it was his duty to dismiss Coroners for misconduct. The Judges were addressed by him on their duties before they went on circuit, and on February 28, 1754, they were summoned to the Council at St James's to hear a charge from Lord Hardwicke in the King's presence<sup>2</sup>. He was patron of the greater part of the legal appointments, and of the numerous King's livings quoted in the "King's Books" at the value of under £20 a year, of which the revenue was sometimes in reality very considerable. He represented the Sovereign as Visitor of the royal foundations. He had the power of issuing against the other courts prohibitions which denied their jurisdiction and annulled the sentence<sup>3</sup>. Various duties and rights belonged to his jurisdiction in the Petty Bag Office, such as the cancelling of patents<sup>4</sup>. It must be also especially noted that the Chancellor, while he presided in Chancery over a court of equity, did not entirely refrain from giving decisions on points of law when these occurred in cases which came before him. He had always the right of sending points of law to the Judges, and, in very important cases, of requesting their presence on his bench. Their opinions, once publicly and solemnly promulgated, were, it would appear, regarded as binding by Lord Hardwicke, though not by all his predecessors or successors. But from a letter of Mr Justice Burnet to the Chancellor<sup>5</sup>, it may be surmised that the opinions thus pronounced in open court were not always individual or independent judgments, but the results of consultation and discussion in private—often of compromise. Questions of law, however, as well as of fact, were often decided by Lord Hardwicke and by other Chancellors without any such reference, and these

<sup>1</sup> See below, p. 469. Also *Butler v. Freeman*, Ambler, 302.

<sup>2</sup> Dodington's *Diary*, 231; H. 522, f. 241.

<sup>3</sup> Prohibitions denied the jurisdiction, while injunctions only bound the parties not to proceed further. The latter belonged to the Chancellor's equity jurisdiction (see below, pp. 435, 442, 475).

<sup>4</sup> Maddock, i. 1 sqq.; Holdsworth, i. 237.

<sup>5</sup> In the case of *Ryall v. Rowles*, submitting his argument before announcing it in Court, with Lord Hardwicke's criticisms and Lord Ch. Baron Parker's argument. H. 834, ff. 135, 147; Ram, *Science of Legal Judgment*, 367-374.

decisions were sometimes accepted as precedents afterwards in the courts of common law<sup>1</sup>.

In addition to these miscellaneous and numerous jurisdictions, various responsible functions devolved upon the Chancellor in hearing appeals to the Privy Council and in prize causes<sup>2</sup>, and especially as Speaker of the House of Lords, alluding here not to his political and presidential duties, though these were at least in Lord Hardwicke's time very considerable, but to his judicial work in the decision of appeals, not only from the common law courts in England and from his own Court of Chancery, but also from Scotland and Ireland.

All these extensive powers and functions were, however, subsidiary and unimportant in comparison with the Chancellor's supreme jurisdiction as president of the Court of Chancery and dispenser of equity throughout Great Britain. As Keeper of the King's Conscience, and as his representative as the Fountain of Justice, it was the Chancellor's duty and privilege to sustain or supplement the common law in cases where the methods or limits of the latter would have brought about a failure of justice. Such powers, it is evident, in theory, gave to the Chancellor control over the persons and properties of every man in the kingdom; and during the tenure of office by unscrupulous and ambitious men, such as Cardinal Wolsey, this authority, when backed by the royal approval, was exercised tyrannically and oppressively, and without much fear of resistance. But with the fall of the Star Chamber disappeared the Chancellor's jurisdiction in criminal matters, and it was henceforth practically limited to dealing with the property of the King's subjects. Very great powers, however, and enormous capabilities for good or evil still remained; for it is through their purses that men are touched most sensibly, and life has little value when the law does not protect the individual in the quiet and rightful possession of his property. The Chancellor, besides adjudicating equitably on questions involving the disposal of personal property, had still the control of all the landed property in the kingdom, which at the time of Lord Macclesfield's disgrace, a few years before Lord Hardwicke's accession to the Woolsack, was reckoned as coming every 30 years into his court for decrees concerning its distribution. In theory, the Chancellor administered

<sup>1</sup> 2 Atkyns, Preface, vi.; Ram, 69; Ambler, 185; 2 Vesey, 153.

<sup>2</sup> For the establishment of this court and for the authority of the Commissioners, supported and defended by Lord H. in Parliament, see H. 528, f. 364; H. 550, ff. 197 sqq.

equity in accordance with his conscience and the principles of pure justice as interpreted solely by himself. According to Selden<sup>1</sup>, "Equity in law is the same that the spirit is in religion, what every-one pleases to make it. Sometimes they go according to conscience, sometimes according to law, sometimes according to the rule of Court." Justice, he asserted, was measured in Chancery according to the length of the Chancellor's foot. It depended on the character, learning, or humour of the judge. There were no limits; there was no uniformity. This description was doubtless something of a caricature, but the expressions of many later Chancellors and legal authorities might be quoted to show that the equity jurisdiction was conceived as being discretionary and independent<sup>2</sup>. Men without any knowledge of the law, such as Sir Christopher Hatton, or later in the time of James I, such as Bishop Williams, were sometimes appointed to preside in the Court of Chancery, as it was supposed that the only necessary qualification for administering equity was the desire to do justice. Even Blackstone, in an early passage of the *Commentaries*<sup>3</sup>, published shortly after Lord Hardwicke's retirement from the Chancellorship, though later he gave a very different definition of equity, says: "Equity thus depending essentially upon the particular circumstances of each individual case, there can be no established rules and fixed principles of equity laid down without destroying its very essence."

Such was the theory. In practice, however, the independence and discretionary power of the Chancellor were considerably curtailed. Even in early times, when the "custom of the Court" was little defined and precedents were few, his jurisdiction was limited in many directions and from various causes. The *dictum* of Lord Kames, "that a court of equity, accompanying the law of nature in its gradual refinements, enforces every natural duty that is neglected by the common law<sup>4</sup>," had never been true of equity as practised in England, even at the earliest periods, when the Chancellor's powers were vaguest and least defined<sup>5</sup>. Neither

<sup>1</sup> *Table-talk*, "Equity."

<sup>2</sup> *E.g.* Lord Ch. Nottingham, who declared that "he was to make decrees according to his conscience, and every case was to stand upon its own bottom." <sup>2</sup> Vernon, 74.

<sup>3</sup> i. 61 (pub. 1765).

<sup>4</sup> *Principles of Equity* (1760), Introd. p. vii.

<sup>5</sup> A footnote in Mr Justice Story's *Equity Jurisprudence* (p. 11), which runs as follows: "Lord Kames's remarks are entitled to all the more consideration, because they seem to have received, in some measure at least, the approbation of Lord Hardwicke," is misleading. There is nothing in Lord H.'s letter to support this statement. He merely expresses to Lord Kames his "approbation of the ingenuity and industry of your researches and reflexions," and discourses on some other questions arising incidentally

equity nor the common law had ever undertaken the impossible task of "enforcing every natural duty." Crimes punishable at common law by no means covered the whole range of sins against religion or morality in general, and similarly equity had never attempted to relieve in all cases contrary to natural justice. In the case of a person dying intestate, for instance, however great the "natural" injustice, and the consequent suffering inflicted, however clearly the intention of the deceased might be demonstrated by other means, equity would grant no remedy any more than the common law. "The province of equity," says a good authority, is that part "of natural justice which is of a nature to be judicially enforced, but which the courts of the common law for reasons of a purely technical or formal character omitted to enforce<sup>1</sup>." The very existence of the Court of Chancery depended upon this recognition of its own limits and the gradual developement of its jurisdiction into a more or less settled legal system. Otherwise, had it claimed irresponsible and arbitrary powers, it is certain that it would have shared the fate of the Star Chamber, from which in its judicial character it would have been scarcely distinguishable<sup>2</sup>. What were the frontiers of this "province," what exactly was the position of equity towards the common law, and how far the powers of the Chancellor extended in interfering with and controlling the latter, are questions not easily answered with accuracy and precision. But under Lord Hardwicke's Chancellorship, and largely owing to his own decrees, the equity jurisdiction became much more defined and certain; and we are able, from the great number of cases decided by him, to form some clear general ideas, at least, of its scope and limits.

The most important limiting force upon the Chancellor's discretionary powers was the authority of precedent. If we may infer anything regarding the Chancellor's jurisdiction from the commands of King Edward IV to Kirkeham, when appointed Master of the Rolls, to administer justice "according to equity and conscience, and to the old course and laudable custom of the same court<sup>3</sup>," there would seem, even in early times, to have been some respect for precedent. Under Lord Ellesmere we find precedents occasionally

(see below, p. 550). No equity lawyer, who had practised in Chancery, could ever have accepted the *dictum* in the text, and numerous instances will be quoted in which Lord H. repudiated such claims for equity.

<sup>1</sup> Snell, *Principles of Equity* (1898), 2.

<sup>2</sup> See on this point Sir Fred. Pollock, *The Expansion of the Common Law*.

<sup>3</sup> Kerly, 60.



sought for, but these must have been very few in number and were by no means authoritative. He still allowed appeals to his personal feelings and claimed the power of determining against law and statute. Under Lord Nottingham precedent had more weight, and this was increased as one great lawyer succeeded another on the Woolsack in subsequent years, such as Lord Cowper and Lord Talbot, and records of their decrees were more carefully kept and collected. A few printed reports of Chancery decrees existed together with a larger number of manuscript collections, which circulated between members of the bar, and were extensively copied and quoted. But it was not till Lord Hardwicke's time that precedents received an overwhelming and predominating influence<sup>1</sup>. Not only were his decrees more largely than any preceding Chancellor's based on the knowledge and analysis of former cases, but his own decisions, dealing with an immense variety of questions and establishing numerous principles, became during the latter part of his Chancellorship a fresh series of authorities, which were frequently cited by counsel to influence his judgments, and which were also studied by himself<sup>2</sup>. The argument now generally consists chiefly of an examination of such earlier decisions, of an exhaustive comparison between them and the case under review, and of a deduction from both sides of some common principle on which it might be said that the old cases as well as the new had been determined.

It has often been assumed that this immense respect for precedent was founded on the veneration which the opinions of the ancient sages of the law inspired in their successors. No doubt the decrees of the more famous Chancellors carried great weight; but no dogma of infallibility existed in the law, and decisions of the Chancellors, whose legal reputation was the highest, were often overruled later. The real cause of the great importance attached to precedent, at least by Lord Hardwicke, was without any doubt the disastrous consequences of any unsteadiness or variation in the fundamental principles of equity, on which the whole settlement of real property for past generations in England had depended. "Certainty is the Mother of Repose and therefore the Law aims at Certainty"<sup>3</sup>—is a happy *dictum* of Lord Hardwicke's which is still remembered in the law courts, and which

<sup>1</sup> Wallace, *Reporters*, 24; Kerly, 187.

<sup>2</sup> See e.g. H. 671.

<sup>3</sup> In *Walton v. Tryon*, Dickens, 245; and see vol. i. 129.

expresses perfectly the security, the finality, the freedom from litigation which the law ought to afford and the public confidence which it ought to inspire. In order to give the law this certainty he was prepared to go great lengths. "Authorities established," he said, "are so many laws; and receding from them unsettles property, and uncertainty is the unavoidable consequence. To the maxim of Lord Bacon, cited at the bar, that not the decision but the ground on which it stands, is to be regarded, I shall oppose the saying of Lord Trevor, a man most liberal in his constructions, that many uniform decisions ought to have weight, that the law may be known; and to gratify private opinion, established opinions are not to be receded from<sup>1</sup>." In the case of *Prowse v. Abingdon*<sup>2</sup>, 1738, he ordered a legacy left to a person on attaining the age of 21, but who died before reaching it, not to be paid to the administrator on the ground that it was raised on the real as well as the personal estate. In so decreeing he did not follow his individual notion of justice, for he proceeded to say: "that was a difficulty which always stuck with him, and it was something very extraordinary that the real estate, which was only an auxiliary fund to the personal, should in cases of this kind be chargeable in a different manner and not be made liable to the same rules and determinations." But it being clear that charges payable at a future date could not be raised on real property, if the party died before, and as he "found the resolutions so strong that there was no difference between a charge on the real estate only and a charge on the real and personal estate too," he therefore declared that "he could not, at this time of day, think of determining in a different manner<sup>3</sup>." In the same way, in the important leading case of *Casborne v. Scarfe*, 1738<sup>4</sup>, he reversed the decree of the Master of the Rolls, which had been given in order to remove an anomaly, on the ground that it disturbed too many settlements. In *Hume and Wife v. Edwards and Wife*, May 24, 1749, his first opinion on the case was completely altered by the discovery of another precedent<sup>5</sup>. In *Gorton (or Galton) v. Hancock*<sup>6</sup>, Oct. 29, 1742, Jan. 11, 1743, and June 25, 1744, the

<sup>1</sup> *Ellis v. Smith*, 1 Vesey, jun., 17. Thomas, Lord Trevor (1653-1730), Chief Justice of the Common Pleas.

<sup>2</sup> 1 Atkyns, 482; West, 316.

<sup>3</sup> See further, p. 438.

<sup>4</sup> Story, 663; White and Tudor (Snow), ii. 6, 30; 1 Atkyns, 603; Kerly, 194; West, 221; Annaly, 399; Snell, 334; H. 832, f. 121 and see p. 462.

<sup>5</sup> Atk. iii. 693.

<sup>6</sup> Ridgeway, 310; 2 Atkyns, 430, 438; H. 668, f. 69b, and H. 671, f. 95b, and Hargrave MSS, 383 (Jodrell MS, 4), ff. 21, 117, and below, pp. 479, 498.

strong desire to avoid disturbing settled precedents concerning the execution of estates, caused him to reverse his own decree. This was a question of exoneration of certain lands devised to the wife and of marshalling of assets. At the first hearing of the case he had pronounced for the defendant on equitable considerations, but on re-hearing it and having examined precedents further, he decreed for the plaintiff, saying: "I was struck at first with the appearance of hardship in the case, but such hardships must not induce the Court to break in upon its rules and especially those for marshalling assets." Occasionally even justice in an individual case was sacrificed to the necessity of maintaining some beneficial general principle. Thus in *Bedford v. Coke*, Oct. 29, 1743<sup>1</sup>, a motion being made on behalf of the Duchess of Wharton for the payment of interest on arrears of her annuity, he said: "The case is hard and if I could come at it agreeably to the rules as acknowledged, I would do it....I do not recollect an instance, and have not heard one cited, where the Court hath gone the length of what is now prayed. If any can be found to warrant me in doing it, I shall be pleased; therefore let the motion stand over and let precedents be searched." The search, however, proving unsuccessful, the motion dropped.

Again in *Townshend v. Windham*, July 13, 1750, he refused to prefer the interests of the child to those of the creditors and said: "This is an unfortunate case but I cannot help it; for I must not lay down a rule which will make the rights of creditors precarious ...so as to break in upon principles and rules established, which would be perilous in future instances;...and though an unfortunate case may arise in the case of children, for whom parents are bound by nature to provide, it is impossible to say the consideration in respect to them is of so high a nature as that of paying just debts<sup>2</sup>." In *Evelyn v. Evelyn* he said: "I would not be understood that the argument of inconvenience alone has weight enough to decide the question, but it is a reason at least for not unsettling former determinations; and if I was to vary in opinion, it would tend to alter distributions made since 1708, and disturb the peace of families<sup>3</sup>." On the other hand, when no such evil consequences were to be apprehended from a departure from precedent, he would allow the full exercise of equity. Thus in *Tucker v. Phipps*<sup>4</sup> he

<sup>1</sup> Dickens, 178.

<sup>2</sup> 2 Vesey, 1. This case was apparently just on the border line.

<sup>3</sup> 3 Atk. 765; Ambler, 194.

<sup>4</sup> 3 Atk. 359.

overrides the rule of the Court not to allow a suit against an executor for a legacy before probate of the will, since "in the present case the plaintiff ought not to be put to the difficulty of going into the spiritual court to cite the defendant, because that would be giving the defendant a great advantage."

But very often by a careful analysis of the case under review and by comparing it in all its details with the precedent, the two might appear not altogether similar or analogous<sup>1</sup>. The case could then be decided upon some principle arising incidentally and exceptionally, and yet the series of precedents and the rule which they upheld be left at the same time untouched. This obviously left the door open to hair-splitting subtleties and "distinctions without a difference," if the Chancellor were so inclined. But Lord Hardwicke always showed himself very averse to such methods and based his decisions invariably on broad divergences and clear principles. "It would be the strangest thing in the world," he said, "for a Court of Equity to determine upon such nice distinctions and very slight arguments, which would never stand with the reason of mankind without doors<sup>2</sup>."

A striking example of the great and abiding influence of precedent, and at the same time of the possibilities of escape from its too tyrannical authority, is afforded by the case of *Newcomen v. Bethlem (Bedlam) Hospital*, Nov. 10, 1741<sup>3</sup>, in which the distinction made in law between heirs male to take by descent and heirs male by purchase, laid down in the ancient statute *De Donis* and in Coke upon Littleton was questioned, and in which the celebrated *Shelley's case*<sup>4</sup>, the wonder and bewilderment of generations of lawyers since its first promulgation, more than 300 years ago, was involved.

The case came before Lord Hardwicke as a bill of review to reverse a decree of Lord Chancellor Cowper, pronounced Feb. 11, 1717, and "which had been a matter of much speculation in Westminster Hall." Lord Cowper had argued strongly against the authorities mentioned and Lord Hardwicke declared: "This much I will say, that if this matter had been *res integra* and to have been originally considered at the time this decree was made, I am so fully convinced by those arguments [Lord Cowper's] of the

<sup>1</sup> Ram, 248.

<sup>2</sup> 3 Atkyns, 422, in *Lee v. Cox and D'Aranda*, and 3 Atk. 69; see also 2 Vesey, 417.

<sup>3</sup> Ambler, 8 and 785; H. 668, f. 2b, and H. 832, ff. 218, 242; H. 699, ff. 162, 166; H. 700, f. 42b; H. 702, f. 98b.

<sup>4</sup> Stephen's *Commentaries* (1903), i. 192.

unreasonableness of the distinction that I should entirely have concurred in opinion with his Lordship on this general point. But it is undoubtedly true, as was then admitted, that whenever Rules of Law have obtained for any considerable time in Books of good authority, and been received as things settled, they ought to be submitted to as part of the Law, and consequently be followed, generally speaking, both in Courts of Law and Equity: even though such rules should happen, on a strict enquiry, not to have much of natural reason to support them;—because in many cases of that nature, it is not of so great consequence what the Law is, as that it be certain, and that mankind may know the Rule of Property<sup>1</sup>.” He added: “As my Lord Hobart says that it is the duty of Judges to be *astute* to come at the right, so I think it is particularly so when they find a rule established contrary to natural reason (though I would not be understood to affirm this to be established), to endeavour to find out reasonable distinctions to deliver particular cases from the force of such a Rule.” This he now proceeded to do with the result that the portentous rule and precedent were left unimpeached, while at the same time Lord Cowper’s decree was affirmed, and the demands of equity were satisfied<sup>2</sup>.

Lastly, when failure to do justice in the individual case or the sacrifice of some great principle were the only alternatives, and each involved equally a serious violation of equity, he would endeavour to avoid giving any decree and would urge the parties to make a compromise or else obtain relief elsewhere. Thus in *Thayer v. Gould*<sup>3</sup>, Feb. 9, 1739, a case which arose upon a settlement after marriage, he said: “I foresee great hardship on the one side, and dangerous consequences on the other, and have very great doubts with myself what decree I shall make; and therefore recommend it to the parties, as it is a case of considerable difficulty, to find out a third way of moderating this affair.” The suitors accordingly came to an agreement<sup>4</sup>. In *Adlington v. Cann*<sup>5</sup>, July 4, 1744, a case concerning the legality of a charitable bequest, he said: “I am under some difficulty about determining this point

<sup>1</sup> Cf. Ram, 24, where Lord Eldon is quoted: “It is better the law should be certain than that every judge should speculate upon improvements in it”; also *Sparrow v. Hardcastle*, Ambler, 227–8.

<sup>2</sup> Also in *Richardson v. Greese*, 3 Atk. 68.

<sup>3</sup> 1 Atk. 617.

<sup>4</sup> In *Berkeley v. Ryon*, July 1754, he also recommended a compromise. H. 831, f. 178.

<sup>5</sup> H. 670, f. 137.

for fear of breaking in upon the Statute of Frauds and Perjuries on the one hand, and that of breaking in upon the Statute of Mortmain on the other." He escaped from the dilemma by sending the parties to a trial at common law, and finally, with consent of both sides, dismissed the bill without costs. In *Attorney General v. Day*, March 3, 1749, he approved of the parties seeking by a private Act of Parliament to obtain justice, "which would deliver him from all his difficulties<sup>1</sup>."

The authority of precedents could indeed go so far as to alter or nullify a statute. "A series of precedents," said Lord Hardwicke, "against the plain words of an Act of Parliament have made a law<sup>2</sup>." Again the maxim of *Stare decisis*, as in the interpretation of wills, sometimes completely overruled obvious equitable considerations. The testator's intention was always considered to be the principal guide, "the polar star" to the interpretation, but nevertheless, it had frequently to yield to precedent, "when decision had affixed to certain words or kinds of disposition a particular [meaning or] construction...although the effect might be wholly to defeat the testator's intention<sup>3</sup>."

Notwithstanding, it must not be supposed that precedents, even when established by great authority, and long followed, were necessarily and absolutely binding, when they clearly caused inconvenience and injustice without any counterbalancing advantages. There was no infallibility attached to the decrees of the Chancellors and in such cases Lord Hardwicke, though not without serious consideration, did not scruple to overturn them and to provide a fresh basis for future decisions. But even here it will often be found that contrary precedents could be also quoted, or that the record was doubtful, or—the weightiest or most important of all considerations—that no important interests established by the former decision would be injured or unsettled, and thus the new decision could be justified. In *Mason v. Fawcett*, March 3, 1743, Lord Hardwicke refused to follow Lord Talbot's opinion, saying that he differed from him<sup>4</sup>. In *Tuckfield v. Buller*, Dec. 13, 1753<sup>5</sup>, an appeal from the Master of the Rolls and a case which turned upon the partition of an estate, it was urged by Counsel that the Judge in his decree had followed a series of decisions including one of Lord Hardwicke himself. The Chancellor, however, after

<sup>1</sup> 1 Vesey, 224.

<sup>2</sup> *Bailiff of Ilchester v. Bendishe*, West, 185; also Ram, 238-9.

<sup>3</sup> Ram, 342.

<sup>4</sup> H. 671, f. 147b.

<sup>5</sup> 1 Dickens, 240.

taking some time to consider, revised the decree, telling the Court—“A case of *Davenport v. Oldis*<sup>1</sup>, said to have been determined by me, hath been cited in support of the decree. I might make such a dècree, and I am apt to think others similar to it may be found, but I think them wrong, and thinking them so it is proper they should be set right.” He then mentioned other precedents to the contrary and proceeded to base his new decision on these.

A few days afterwards, on December 16, he delivered an elaborate and minute judgment in *Walton v. Tyron*<sup>2</sup> on tithes upon trees, arguing the question first “on reason,” and secondly “on authorities.” These latter being inconsistent and doubtful, he brushed them aside and laid down a new precedent which might be followed and understood. In *Gower v. Grosvenor and Piggot*<sup>3</sup> he declared himself not at all bound by Lord Nottingham’s decisions, especially when there existed analogous cases supporting a different conclusion, and said of the latter’s argument that it was a “very spongy reason and such a one as I can by no means come into<sup>4</sup>.”

When the extreme value and importance attached to precedents, and especially to the decrees of the later Chancellors are remembered, and the immensity of the interests as well which depended on them, it must appear a very singular circumstance that so little care was taken, and that so few attempts were made, to report judicial proceedings with accuracy or to embody them in some form in which they might be permanently preserved and generally accessible. The printed Chancery Reports before Lord Hardwicke’s time were exceedingly few, about 12 only<sup>5</sup> in number, scanty in their contents and frequently untrustworthy<sup>6</sup>. Some reports were

<sup>1</sup> 1 Atk. 579.

<sup>2</sup> 1 Dickens, 244; 1 Ambler, 130.

<sup>3</sup> Leach, *Modern*, ix. 251; see also Fonblanque, *Treatise of Equity*, ii. 189 n. and elsewhere in this work.

<sup>4</sup> On the question of precedents see also Paley, *Moral and Polit. Philosophy*, Bk. 8, Ch. 8 (*Works*), ii. 355 sqq.

<sup>5</sup> According to the list in Wallace’s *Reporters*.

<sup>6</sup> Up to 1776 the whole number of printed volumes, both law and equity, has been reckoned at about 150. Of these the greatest number were published after 1740. At the present time the number is computed at about 3000 (Wallace, 25; Kerly, 187). Lord Hardwicke himself in earlier days had had some share in the publication of two at least of the most accurate and authoritative of such collections. The first edition of the *Reports* of Serjeant Salkeld, brother of the solicitor, his old law tutor, consisting of vols. 1 and 2, were published shortly after the author’s death in 1717 under his care, and his name is also included in the list of subscribers. Bridgman, *Legal Bibliography*, 295. He also contributed corrected reports of his own arguments and opinions to the collection of his former fellow-student and life-long friend, Sir John Strange, published by the latter’s son after his father’s death in 1755. Both this work and the *Reports* of

more accurate than others and some more trustworthy in certain portions of their work than in the rest. Certain reporters again were accepted by some Judges as authorities but repudiated by others<sup>1</sup>. These were supplemented by collections in manuscript made by private hands, which circulated among members of the Bar, but which were only accessible to the few and which varied in authority and value<sup>2</sup>.

Two cases, which had remained in manuscript and which had never been published, were cited and relied upon by Lord Hardwicke in the important cause of *Hervy v. Aston*<sup>3</sup>. In another cause, a case decided by Lord Hardwicke and which had remained in manuscript, was unearthed as an authority after a burial of 50 years and was then found so unrecognisable and so opposed to the "practice of the court" that it was immediately re-interred and consigned again to oblivion<sup>4</sup>. It has happened once, at least, that a case has been decided on the authority of a precedent, which had remained in manuscript and which had never been heard of by the Counsel on the other side<sup>5</sup>, and Lord Hardwicke, who in the course of his long legal career had collected a large number of manuscript reports, frequently referred to cases which had not been studied by Counsel in the case.

This strange neglect of the only records on which the system of equity depended, tended to create great confusion and uncertainty in the law<sup>6</sup>. A large proportion of the decrees pronounced were without doubt never heard of again. Those, which were recorded and which were accessible, were often misinterpreted, inaccurate, and unintelligible. The searchers of the records, like those who consulted the oracles of the Sibyl, inscribed by the goddess on

Peere Williams were dedicated to him, and received his *imprimatur*, and to the latter, in the same way, were communicated his own notes in at least one important case. Lord Annaly's *Reports* also, according to a perhaps accurate statement of F. Hargrave, on the authority of Johnston, one of the proprietors, "were revised by Lord Chancellor Hardwicke and approved by Mr Charles Yorke, who advised the bookseller to print them" (MS note in Hargrave's copy of the *Reports* in the Brit. Mus.).

<sup>1</sup> Wallace, 28 sqq. Lord Hardwicke, for instance, on different occasions stigmatized as of no authority Fitz-Gibbons', Finch's, and Shower's *Reports*, also the third vol. of Salkeld and the *Practical Registry*.

<sup>2</sup> Some valuable MS collections of this kind, collected by or transcribed by Lord Hardwicke, are to be found in the Hardwicke MSS.

<sup>3</sup> West, 362, 374 (see the case below, p. 445).

<sup>4</sup> *Robinson v. Longe*, Kerly, 187.

<sup>5</sup> 18 Vesey, jun., 344; the successful party was not allowed costs in consequence.

<sup>6</sup> Kerly, 187.



loose leaves and abandoned to the mercy of the winds, returned from their investigations baffled and disappointed.

Inconsulti abeunt, sedemque odere Sibyllae.

"It is a misfortune," said one of the Counsel practising before Lord Hardwicke in *Chesterfield v. Janssen*<sup>1</sup>, "that accounts of courts of equity are conveyed to the public in loose notes by persons not concerned in the cause and mistaken, and that general rules are drawn from particular premises." A case reported by Vernon and cited before Lord Hardwicke, on reference to the Register, was found to be totally mistaken, the Chancellor remarking: "I am very sorry to find that the reports of so able a man should be so imperfect and come out in this manner<sup>2</sup>."

Lord Hardwicke himself was rather more fortunate in his reporters than had been his predecessors. His decrees attracted a far greater amount of interest at the Bar than had any former Chancellor's, and they were reported by more numerous hands, more systematically and more accurately, but still with many imperfections and errors and often failing to do justice to the importance and meaning of the principles established<sup>3</sup>.

<sup>1</sup> See this case, below, p. 452.

<sup>2</sup> 1 Atk. 556.

<sup>3</sup> The chief reporters of Lord Hardwicke's decrees in Chancery are:

(1) Atkyns, 3 vols. (1765-8), who prints cases from 1737-1754. The author declares he has not sought the *imprimatur* of the judges; there were many complaints of his inaccuracies, and Lord Hardwicke himself gave a positive refusal to the author who had sought his consent to the publication. (H. 242, f. 71, and H. 247, f. 70.)

(2) Vesey, sen., 2 vols. 1771, with a supplementary volume published by Belt, 1817, and reporting cases 1747-1755.

(3) Ambler, pp. 1-333, with a few cases in the following pages, including the celebrated one of *Le Neve v. Le Neve*, pp. 436-447, and extending over the whole of Lord H.'s Chancellorship. The above reports were perhaps as good as the circumstances permitted, but contained many inaccuracies and in general reproduced inadequately the Chancellor's decrees. New editions of all three, after collation with various MS reports, were published in later years.

(4) Ridgeway, pub. 1794, on account of "the high estimation in which Lord Hardwicke's name is so deservedly held [and which] has long excited a desire in the Law Professors of being acquainted with all his judicial determinations." This little volume, however, of which a portion is devoted to H.'s judgments in K.B., is only a very small, though valuable contribution to the authorities. It contains chancery cases only of 1744-5, pp. 165-end.

(5) West, vol. i. pub. 1827. This was the beginning of a laudable attempt at a definite edition of Lord H.'s whole work in Chancery, for which purpose the existing printed reports were collated with H.'s own MS note-books and legal papers and with various other MS collections. It was accompanied with notes giving the subsequent development of the principles laid down. The work, however, which would probably have run to numerous volumes, proceeded no further than the first, which deals with cases 1737-1739, and we learn from the preface that a former attempt had also failed. The time for such an edition had gone by, for by then Lord H.'s decrees had become the foundation of enormous later superstructures, and to edit his work on this plan was

On one occasion, at least, some years after his death, Lord Hardwicke's own note books were referred to and used to correct his reporters<sup>1</sup>. A serious misconception also took place concerning a supposed *dictum* by Lord Hardwicke in *Bagshaw v. Spencer*, November 12, 1748, when he was reported to have abolished the

practically to publish the whole developement of equity for nearly 100 years in all its branches and details. It would, however, have been a splendid monument to his genius.

(6) Leach, *Modern Reports*, vol. ix. 209-end, extending over period 1737-1755, but reporting of course only a few of the cases then decided. The work includes contributions from the MSS of Charles Butler and of Saml. Salter of the Inner Temple.

(7) To these may be added as supplementary :

(a) Lord Kenyon's *Notes of Cases in K.B.* (1819), containing a few decided by Lord H. in Chancery.

(b) Lord Annaly's *Cases temp. Hardwicke*, sometimes called *Lee's Cases*, in which a few Chancery decrees of Lord H. are reported, including the celebrated one of *Casborne v. Scarfe*, p. 399. See p. 430 n.

(c) Vesey, jun., Cox, *Cases in the Courts of Equity* (1816), Swanston, and Durnford and East, in which a few cases are given.

(8) Reports of less authority :

(a) Barnardiston, *Cases in Chancery*, pronounced inaccurate, but sometimes useful, the whole vol. of 500 pp. containing little else than reports of Lord H.'s decrees of one year.

(b) Dickens, pub. 1803.

(9) Besides these printed Reports, Lord H.'s own MSS in the Brit. Mus. exist as a valuable supplement, consisting of

(a) H. 697-721, 25 vols.—a series of note-books containing all the cases decided by him as Chancellor 1737-1756 (1 vol. November 1750—July 1751, missing). These include generally little more than short reports of cases, arguments of counsel, as taken down by himself in court, and without his own arguments and decrees, though a few of the latter are given.

(b) H. 831-4, 4 vols., containing a large number of drafts of his decrees and written judgments in his own handwriting or with his own corrections.

(c) H. 662-673, reports by other hands, often with notes by Charles Yorke, who was engaged in many cases before his father, and by Lord H. himself.

To these MSS may be added, as easily accessible in the British Museum, transcripts of two vols. of the Jodrell MSS in the Hargrave collection, 383 and 412, containing reports of cases 1739-40 and 1743-44. (See Lord Campbell, *Lives of the Chancellors*, v. 50 n., and H. 5, f. 200.) Lord Mansfield's valuable MS reports of cases heard by Lord H. were burnt in Bloomsbury Square in the Gordon Riots.

(10) Some of the legal treatises in which Lord Hardwicke's decrees have been printed and the subsequent developement of principles laid down by him followed, may conveniently be also here enumerated: White and Tudor, *Leading Cases in Equity*; Story, *Commentaries on Equity*; Spence, *Equitable Jurisdiction*; Lord St Leonards *Treatise on Powers*; Fonblanque, *Treatise of Equity*; C. P. Cooper, *Chancery Cases* (1852); *General Abridgment of Equity Cases* (1756), Hargrave's copy in the Brit. Mus. containing several MS notes of H.'s decrees "from the book of Mr Brown, a very eminent barrister in full practice in Lord H.'s time"; Kekewich, *Digested Index*, 1804 and 1807; Bridgman's *Index*, 1805; *Collectanea Juridica*, vol. i.; also Hargrave's MS notes in his collection of legal works (all in the Brit. Mus.), and especially in his copy of Vesey, sen.

<sup>1</sup> 4 Vesey, jun., 689.

difference in the construction of trusts executory and executed, which created considerable bewilderment at the Bar and disapproval, whereas he had gone no further than to say that, if the matter had been *res integra*, he would not have distinguished between them<sup>1</sup>.

Lord Hardwicke appears to have been fully conscious of the evil. "Nothing," he said, "is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented<sup>2</sup>"; and in private conversation he is said to have expressed the wish that the arguments contained in decrees and judgments were published every year and signed by the several Judges who pronounced them. A remedy lay at hand and all that was required was the appointment of official reporters. No steps were taken, however, towards any reform. For besides inaccurate reports there was another danger, that of bad judgments, and Lord Hardwicke's real reason for acquiescence in the existing inconveniences was probably the fear of publishing with an official *imprimatur* and authority a series of wrong, contrary and varying decisions, of laying down and perpetuating a number of bad precedents and thus creating greater confusion and uncertainty than existed already.

We can gather so much from a correspondence between the Chancellor and Sir Michael Foster, one of the most eminent of the common law Judges of this time, who was preparing his Reports<sup>3</sup>, and was desirous of obtaining the Chancellor's support for his work. The latter, however, disapproved strongly of the inclusion of certain cases. One was that of John Bell, who had been found guilty of high treason for having in his possession a press for coinage but in whose case judgment was respited, until the opinion of the Judges upon the points of law had been heard. Eventually the prisoner was pardoned under the Great Seal but Lord Hardwicke declared that a serious mistake had been made, and much censured the "suffering of the defendant to be convicted of high treason subject to the opinion of the Judges instead of directing a special verdict."

<sup>1</sup> The importance of this lay in the fact that there was a Rule that "trusts executed are to be construed in the same manner in courts of law and equity." Lord H.'s supposed *dictum* would have upset this. See 2 Atkyns, 246, 577, 582; 2 Vesey, 323, 654; 1 Vesey, 142; Fonblanque, i. 407-19 n.; Belt's *Supplement to Vesey*, 435; 2 Spence, 133 and n.; C. Fearne, *Essay on Contingent Remainders*, 120-136; 2 Cox, 8; 2 White and Tudor, ii. 770 sqq.; Kerly, 197-8. The cause and Lord H.'s decree, which occupies 29 pp. of MS, are fully reported, with corrections by Lord H., in H. 670, f. 52, and the point in question f. 78 b; H. 665, f. 198; H. 834, f. 413; also *Collectanea Juridica*, i. 378. <sup>2</sup> 2 Atk. 469.

<sup>3</sup> *A Report of some Proceedings*, &c., 1762. Note also the failure of Lord Keeper Bacon's appointment of official reporters. Spedding's *Bacon*, xiii. 261 sqq.

A very similar case had come before him as Chief Justice when the point of law had been properly considered before conviction<sup>1</sup>. In Bell's case a bad precedent was now set, and a serious infringement of the rights of the subject and of the fundamental principles of jurisprudence committed by thus convicting the prisoner of the charge before considering the question of law. The divergent opinions of the Judges also on various points rendered the case a very unsatisfactory and misleading one for citation. Lord Hardwicke therefore persuaded Sir M. Foster not to print it in his work. "I believe," the latter said, "that his advice proceeded from a regard to the Judges, or from his fear of establishing a bad precedent by the authority of great names, though he did not explain himself fully upon that head<sup>2</sup>." The Chancellor, however, was not so successful in obtaining the omission of some other cases, those of Lord Forbes of Pitsligo<sup>3</sup>, of Lord John Drummond and of Captain John Gordon of Park<sup>4</sup>, all tried in the House of Lords, and of that of Lord Ferrers, to the latter of which especially he had strong objections<sup>5</sup>. He went so far as to remind Sir Michael Foster of the standing order of the Lords against the publication of their judicial proceedings, but in vain. Both parties preserved their good humour and their mutual friendship, but Sir Michael persisted in his intention and all these cases appear in his work<sup>6</sup>.

These irregular methods of reporting continued for some time longer, though a general improvement in reports both in numbers and accuracy can be dated from Lord Hardwicke's Chancellorship. But it was not till our own day that official reporters were appointed, and that the proceedings in the courts of law, like those in Parliament, began to be published in a regular series of volumes, by competent hands, under the direction of the Council of Law.

We must now return from the digression on the subject of reports into which the question of precedents has not unnaturally

<sup>1</sup> See vol. i. 137.

<sup>2</sup> M. Dodson, *Life of Sir M. Foster*, 43. The case, however, is printed in the appendix of the 3rd ed. of Foster's work by Dodson, 430.

<sup>3</sup> See vol. i. 619.

<sup>4</sup> Below, p. 482.

<sup>5</sup> "I am not, and I believe that Mr Justice Foster was not, apprized of Lord Hardwicke's objections, but I well remember to have been told by Mr Justice Foster, that in the opinion of his son, Mr Solicitor-General Yorke, they were not well founded." (*Life of Sir M. Foster*, 46.) Charles Yorke, with the Attorney General, was Counsel for the Crown. See below, p. 573.

<sup>6</sup> *Ib.* 45 sqq. A copy of the work inscribed in Lord H.'s writing: "The gift of the learned Author, 1762," is still in the library at Wimpole; H. 249, f. 58.

taken us. Besides the force of the latter in limiting the Chancellor's discretion, his judicial action was also frequently, in order to give certainty to the law, influenced and constrained by the fear of giving directions contrary to those of the other courts of law<sup>1</sup>, or to Acts of Parliament. In earlier times the two jurisdictions of common law and equity had appeared as rivals in open and bitter hostility. They attacked each other with violence, and their respective chiefs often spoke publicly in terms of scorn and disparagement of each other's learning and practice. The courts of equity were encouraged to interfere more and more to alleviate the rigour and pedantry of the common law, and the common law on the other side stiffened into greater formalism, strictness and conservatism, to ward off the invidious, demoralising and disintegrating influences of a tribunal whose decrees were based on the discretionary action of the Chancellor, and the vague generalities of natural justice. The extremely curious history of trusts and uses and the ultimate success of equity in over-riding both the common law courts and the statutes of Mortmain, and of Uses<sup>2</sup>, afford a good illustration of the rivalry between the two jurisdictions. Lord Hardwicke himself gives an account of this characteristic struggle in the following passage<sup>3</sup>:

"Before the statute 27 Henry VIII [*i.e.* statute of Uses] the judges and sages of the common law gave uses very hard names, and called them the product of fraud, and subversive of the rules of real property. To remedy these mischiefs the statute was made to execute and bring the estate to the use that after the statute the cestui que use might be seized of the estate at law in like manner as before the statute he was of the use in equity.

This the judges at first professed to adhere to, but notwithstanding that, the necessities of mankind [and] the reasonable occasions of families to make use of their estates, compelled them in a little while to give way to such limitations of uses as would by no means be admitted of a common law fee. Future contingent uses, springing uses, executory devises, powers over uses, all foreign to the notions of common law, were let in by the construction of the judges themselves; but still they adhered to their doctrine that there could be no such thing as a use upon a use, but where the first use was

<sup>1</sup> Snell, 3; and cf. vol. i. 129.

<sup>2</sup> See Snell, 46 sqq.; Kerly, 78.

<sup>3</sup> In *Hopkins v. Hopkins*, 1739, West, 620. Referred to by Lord Brougham (*Parl. Hist. N. Ser.* xviii. 184).

declared to any person, there it was executed and must vest for that estate.

Therefore if a man limited land to A and his heirs, to the use of B and his heirs in trust, for or to the use of C and his heirs, the use was executed in B. B had the estate by the statute and C could take nothing.

Of this construction courts of equity laid hold, and said, however, the intention of the party was to be supported; it was plain B was designed to take no benefit to himself; the conscience of B was affected, and it was still a trust in equity to be executed by *subpoena*. To this the reason of mankind assented and it has stood ever since. So that a statute thus solemnly and pompously introduced has, by this strict construction to avoid a use upon a use at law, been reduced to have no other effect, but to add two or three words at most to a conveyance."

The same feeling of antagonism is again brought to light in the well-known anecdote of Sir Thomas More and the Judges of the common law: whom, on complaints being made of his injunctions, he invited to dinner and after showing them the necessity and the cause thereof, promised to issue no more if they would themselves mitigate and reform the rigour of their law: "Whereunto when they refused to condescend, then said he unto them: 'Forasmuch as yourselves (my Lords) drive me to that necessity, for awarding out injunctions to relieve the people's injuries, you cannot hereafter any more justly blame me!'"

In later times, and especially since the Revolution, this attitude of antagonism and hostility gradually diminished and the Chancellors "sent forth their injunctions to stop the course of the common law with a cautious and a sparing hand<sup>2</sup>." Under Lord Hardwicke this tendency received its final and decisive developement, and the two legal systems, while long retaining their separate courts, entirely ceased to be rivals and exercised no longer antagonistic but supplementary jurisdictions, working together in the fullest harmony and agreement. "Equity had come not to destroy the law but to fulfil it<sup>3</sup>."

There were clear and definite causes for the influence which Lord Hardwicke exercised in bringing about this transformation. In the first place, though now Chancellor and presiding in a court of equity, he was himself the greatest authority on the common law

<sup>1</sup> Hoddesdon, *Hist. of Thos. More* (1652), 57-8.

<sup>2</sup> p. 554.

<sup>3</sup> F. W. Maitland, *Lectures on Equity*, 17; and cf. below, p. 511.

then living<sup>1</sup>. He had grown up in its shadow and been inspired from early youth with all its great traditions and principles. Before attaining the Woolsack, he had, as Chief Justice of England, presided over the King's Bench, and during the few years that he remained there had made a great reputation as a judge of common law. He ever showed the highest veneration for the common law and was far too experienced and too learned a lawyer to be tempted to any ill-considered infringement upon its rules and principles. But besides these exceptional and special qualifications, perhaps possessed by no other Chancellor before or since, for holding equal the balance between law and equity, his whole systematic and philosophical conception of the law was generally and essentially antagonistic to the discrepancies, contradictions and paradoxes involved by the existence of two hostile and divergent jurisdictions. He showed the same anxiety as Chancellor to preserve uniformity between the decisions of common law and those of equity as he had when Chief Justice to avoid discordant judgments in the different courts of the common law itself. Even when the case before him turned upon some point outside the jurisdiction of the common law, he sought to decide it on some principle analogous with that which obtained there, occasionally borrowing even from the statute law or from the practice in the spiritual courts, in order that the law as a whole might develope as a uniform, connected and reasonable system. He employed, moreover, the same reasoning by analogy in the decision of cases from the Scottish Courts in the House of Lords, with the aim of assimilating the laws in the two kingdoms and of completing the Act of Union<sup>2</sup>.

In *Paget v. Gee*<sup>3</sup>, December 4, 1753, he said: "As to the equity arising from this statute [11 George II, c. 19], I know no better rule than this, *Aequitas sequitur legem*. Where equity finds a rule of law agreeable to conscience, it pursues the sense of it to analogous cases. If it does so as to maxims of the common law, why not so as to the reason of Acts of Parliament?"

But equity did not follow blindly or slavishly. "When the Court finds the rules of law right, it will follow them but then it will likewise go beyond them." He proceeded to give an instance.

<sup>1</sup> See Lord Eldon's testimony, Twiss, ii. 492.

<sup>2</sup> p. 543.

<sup>3</sup> Kenyon, *Notes of Cases*, end of vol. ii. 31; Leach, *Modern*, ix. 482; Ambler, i. 198, and ii. 807. Elsewhere, in *Pullen v. Lord Middleton*, he said on the same point: "A court of equity will in many cases dispense with the ordinary forms in passing estates, but never introduce any rules that may vary the nature of them at common law." Leach, *Modern*, ix. 484.

"The statutes of forcible entry only provide for removing the force," but equity will grant "an injunction to quiet the possession." In *Prowse v. Abingdon*, a case already quoted<sup>1</sup>, he declared that the true reason why legacies on land in favour of persons dying before the prescribed age, could not be raised, was that "the Court would govern themselves, as far as was consistent with equity, by the rules of the common law"; while with regard to personal estate, the Court followed the civil law, "that there might be an uniformity of judgments in the different courts." And elsewhere: "The ground of following the rules of the civil law in personal legacies has been because they are *alieni fori*; therefore it would be absurd to have two independent jurisdictions judging differently of the same thing. In case of trusts on lands, equity follows that law which has jurisdiction over lands, the common law<sup>2</sup>."

In *Hervey v. Aston*<sup>3</sup> again, defining the somewhat misleading legal principle, *Aequitas sequitur legem*, he said that it was "the allowed general maxim of the Court, the meaning of which is that wherever equity places the trust or beneficial interest in anything, it is (generally speaking) governed by the like rules as the legal property in that thing would be governed by." On another occasion<sup>4</sup>, he said: "I am unwilling unnecessarily to give too much countenance to an argument that is liable to the objection of seeming to set up a rule of property in this Court different from the rule of law, tho' if the case required it, authority would not be wanting."

The extreme care with which Lord Hardwicke exercised his power of interference with the common law jurisdiction is shown more especially by his action in the copyright case of *Tonson v. Walker*, April 1752, when he granted an injunction against the defendant, but "guarded against being thought finally to determine the question," which was then depending in the King's Bench in *Baskett v. University of Cambridge*. Chief Justice Willes comments upon this as follows: "It would not have been agreeable to Lord Hardwicke's great decency and prudence to have spoken out *decisively* upon a general legal right *never decided at law*, and to have grounded his opinion upon an argument which was then a question *sub judice*<sup>5</sup>."

<sup>1</sup> 1 Atk. 481; above, p. 424.

<sup>2</sup> H. 666, f. 12 b.

<sup>3</sup> West, 425, and see case quoted below p. 445.

<sup>4</sup> In *Newcomen v. Bedlam Hospital*, H. 832, f. 255 b; see p. 426.

<sup>5</sup> Holliday, *Life of Mansfield*, 219. See also on this point the opinion of Sir J. Jekyll, M.R., in *Cowper v. Cowper*, 1734; 2 Peere Williams, 753, where he says: "The discretion which is exercised here, is to be governed by the rules of law and equity, which are not to oppose, but each in its turn, to be subservient to the other...."



To these great limitations upon the Chancellor's discretionary powers must be added the less defined and less discernible, but no less powerful control, exercised by professional opinion, which he was under the constant necessity of satisfying, as well as that of the law in general. Sir Henry Maine speaks of the powers of the Chancellor at this time as having theoretically hardly any limit but practically "kept within the narrowest bounds by the prepossessions imbibed from early training, and by the strong restraints of professional opinion, restraints of which the stringency can only be appreciated by those who have personally experienced them<sup>1</sup>." This was not the atmosphere in which a wholly arbitrary and independent jurisdiction could flourish. Lord Hardwicke too must have been particularly sensible to this influence. His relations with the Bar were exceptionally confidential and intimate. He showed also a great respect for the opinions of those who practised before him and a keen desire to satisfy, not only legal professional opinion, but also the parties to the suits who came before him, and even the "reason of mankind without doors<sup>2</sup>."

The more the Chancellor laboured to promote "Certainty" and "Repose" in the law, the more was he impelled to consult and obey precedents and to conform his decrees to the practice and principles of the common law courts and other legal jurisdictions; while the wider his outlook into general jurisprudence, and the deeper the draughts which he drew from the philosophy of the law, the more strongly did he inevitably incline to a settled and permanent system of law, based on general and consistent principles. It is not difficult to understand therefore why the striking transformation in equity jurisdiction by which it became defined, moulded into permanent forms, systematized and therefore in many ways restricted, took place during Lord Hardwicke's tenure of office.

Yet the restrictions thus arising may easily be exaggerated and misinterpreted. By the developement towards definition, system and certainty, and by the concentration of power which was the consequence, a great expansive force was created which, while hostile attacks upon the rival jurisdiction now ceased, inaugurated that "pacific penetration" which was to invade the common law and imbue it through and through with equitable principles<sup>3</sup>.

<sup>1</sup> *Ancient Law* (1906), 67.

<sup>2</sup> See above, p. 426; 3 Atk. 422.

<sup>3</sup> See further below on this point, p. 511.

The actual extent of the Chancellor's powers also, in spite of the many limitations enumerated, still remained enormous. While the interference with the courts of common law was less arbitrary and less frequent, the developements of commerce and the invention of novel kinds of contracts, the multiplication of trusts and the establishment of new species of property, such as the public funds, gave birth to an immense array of causes entirely outside the cognizance of the common law, or else such as the methods of the common law courts, which, tenacious of their ancient procedure and jealous of the Chancellor's jurisdiction, till the time of Lord Hardwicke, clung more and more to their technicalities, afforded no means of deciding<sup>1</sup>. A large number of rights, duties and interests, entirely unknown to the common law, were recognized, and in many other cases, by the provision of more convenient remedies and procedure, action at common law was rendered nugatory<sup>2</sup>.

The equitable jurisdiction of the Chancellor, it is true, was limited to one object alone, that of dealing with property, and had no powers over criminals or paupers, while the great constitutional guarantees of freedom were safeguarded by Parliament and the common law. But the responsibility of dealing with the vast interests connected with property was enormous. The number of landed estates which passed through Chancery every year was very large, while the distribution of personal property in the shape of disputed wills and deeds or intestacies, and which now began greatly to increase, came frequently before the Chancellor for equitable decisions.

Nor had the discretionary powers of the Chancellor disappeared. "This Court is a court of conscience," Lord Hardwicke said on one occasion, "I shall give my opinion according to my conscience<sup>3</sup>"; and elsewhere: "Equity only regards the substance and not the form<sup>4</sup>."

In his letter to Lord Kames<sup>5</sup>, written after his resignation of the Great Seal, he declared his opinion on the important question, "whether a court of equity ought to be governed by any general rules." In his opinion there must be such to avoid the great inconvenience of *jus vagum et incertum*, yet the Judges must not be absolutely and invariably bound by them, since this would be a

<sup>1</sup> Sir F. Pollock, *Oxford Lectures*, p. 28; Snell, 6; Fonblanque, *Treatise of Equity* 1812), i. 13; below, p. 552.

<sup>2</sup> Holdsworth, i. 252.

<sup>3</sup> *Scroggs v. Scroggs*, Ambler, 815.

<sup>4</sup> *Daly v. Desboverie*, H. 671, f. 121 b; 2 Atk. 261.

<sup>5</sup> p. 553.

negation of equity. He observes that in certain classes of cases, such as trusts and the redemption of mortgages, the rules were well defined; but in the case of frauds none had been established, nor could be without defeating the ends of justice and equity, inasmuch as the laying down of such rules would give opportunity immediately of eluding justice and of inventing new frauds.

In such cases he was always careful to avoid binding down the Court by definitions or rules. Thus in *Lawley v. Hooper*<sup>1</sup>, November 19, 1745, a case in which a young man, imprisoned in the Fleet for debt, had sold an annuity of £150 for £1050, he declared that the purchase of part of an annuity at a price far below its value was a "loan of money turned into this shape, only to avoid the statute of usury [and] an agreement such as this Court ought not to suffer to stand, and ordered the plaintiff only to refund the capital with the legal interest. He then added: "There hath been a long struggle between the equity of this Court and persons who have made it their endeavour to find out schemes to get exorbitant interest and to evade the statute of usury. The Court very wisely hath never laid down any general rule beyond which it will not go, lest other means of avoiding the equity of the Court should be found out. Therefore, they always determine upon the particular circumstances of each case; and whenever they have found the least tincture of fraud in any of these oppressive bargains, relief hath always been given."

Again in *Lowther v. Condon*<sup>2</sup>, June 1741, a case concerning the raising of a legacy upon an estate, he refused to be bound by rule or precedent, and declared that, "cases of this sort must be left to the discretion of the Court, who are governed by prudential reasons and particular circumstances"; moreover to insist that he was "to adhere to strict rules...must sound very oddly in a court of equity."

With regard to the relations of the Court of Chancery with the courts of common law, Lord Hardwicke showed an equal independence, and certainly did not share the restricted views with regard to his jurisdiction which more modern writers have been accustomed to lay down. The maxim *Aequitas sequitur legem*, which has been interpreted sometimes as if equity attended as a humble handmaid upon the law, he restricted to very narrow limits. In *Carte v. Carte*, for example, he said: "There was one thing which was mentioned, that this Court must go by the same rules as to

<sup>1</sup> 3 Atkyns, 278; H. 669, f. 70.

<sup>2</sup> 2 Atk. 130.

revocations of wills, as courts of law do; and that, to be sure is true, where it is compelled to do so, in order, as Mr Attorney-General has said, to preserve a sameness of justice in both jurisdictions. But this is only a concurrence of jurisdictions. This Court has relieved against revocation, upon the head of accident, where the law would have held it a clear revocation. It is urged that equity follows the law, or else it would occasion a confusion in the laws of property. That rule is not universal, but relates only to the laws of descents or successions to property, or to the limitations of it, in all which this Court and the courts of law agree in construction<sup>1</sup>."

Nor would Lord Hardwicke have assented to the *dictum* that, "equity cannot relieve against a general rule of law<sup>2</sup>." In *Robinson v. Lytton*<sup>3</sup>, December 13, 1744, where a bill was brought for an injunction to restrain the defendant from cutting down timber on an estate which passed, on the contingency of his death before his majority, to the plaintiffs, he observed, alluding to the legal rights of the defendant pressed by Counsel: "Whatever legal distinction there may be in favour of defendant, if the Court was to refuse an injunction, it would be thought very extraordinary according to the common sense of mankind; and notwithstanding the legal right, yet if there is an equitable ground for this Court to proceed upon, he ought to be restrained." He then issued a perpetual injunction. In *Reech v. Kennegal*<sup>4</sup>, October 26, 1748, we find him over-ruling law, statute and precedent on the ground of fraud—"This is a very strong case to give the plaintiff relief. The rule of law and of this Court, strengthened by the authority of the statute, is, that all the legacies, unless in the case of nuncupative wills, must be in writing and wrote in the will. Then all the rules and arguments laid down for the defendant against breaking in upon the will by parole proof are true. But notwithstanding this, the Court has already adhered to this principle, that the statute should never be understood to protect fraud and therefore whenever a case is infected with fraud,... the Court will not suffer the statute to protect it, so as that anyone should run away with a benefit not intended."

A learned authority of the next generation, Francis Hargrave, writing on this point, says: "Our courts of equity have assumed the power of dispensing with positive rules of law. Fortunately,

<sup>1</sup> Ridgeway, 210-30; Ambler, 28.

<sup>2</sup> Story, 9.

<sup>3</sup> H. 669, f. 9; 3 Atk. 209.

<sup>4</sup> 1 Vesey, 125; 1 Ambler, 67.

however, for the common law, the latter judges of the court of equity have generally confined the exercise of this dangerous power to those cases in which length of time has almost sanctified the practice, and seldom venture upon an enlargement of it<sup>1</sup>.

Lord Hardwicke's interpretation of statute law, as that of his predecessors had been, was sometimes very liberal and much influenced by equitable considerations, especially when fraud was disclosed in the case. He, however, "utterly disclaimed the power of legislation<sup>2</sup>," and he never ventured on the general claim to interpret Acts of Parliament afterwards exercised as a constitutional right by the Judges of the United States. The limits to which he advanced in this direction may be gathered generally from the cases of *Sorresby v. Hollins*<sup>3</sup>, August 6, 1740, and *Mogg v. Hodges*<sup>4</sup>, November 16, 1750, both dealing with the recent Mortmain Act<sup>5</sup>. In the first, he gave a liberal interpretation to the words of the statute, adding that he was "by at the making of the statute, and it was said at that very time by the legislators that it would not hinder any charitable distribution of a personal estate." He therefore decreed the devise good. In the latter case, however, he declared the devise void, and said: "Since the statute of Mortmain, 9 George II, I have endeavoured to give charitable legacies effect as far as I can, but I cannot set up new rules to avoid that statute."

It will be evident from the foregoing illustrations that while the broad aim and extent of the Chancellor's jurisdiction and its general methods stand out distinct and clear, it is impossible to define them specifically or to discern exactly the boundaries and limitations of his powers. It is, in fact, upon this very impossibility of defining them, of subjecting them to analysis and of distinguishing absolute restrictions that the usefulness and efficiency of the Chancellor's jurisdiction as a court of supplementary justice depended. It is unsafe to add anything to Lord Hardwicke's generalities in the letter to Lord Kames, where he says merely that "as far as the nature of things would admit" and in some cases, such as the construction of trusts, the rules of court should be fixed and known, while in others, such as frauds, the questions involved must be left to the Chancellor's discretion<sup>6</sup>. Those writers who have gone

<sup>1</sup> MS note in his ed. of Blackstone's *Commentaries* (1768), Bk. iii. p. 430. He adds examples.

<sup>2</sup> *Chesterfield v. Janssen*, see below, p. 452.

<sup>3</sup> Leach, *Modern*, ix. 223; *Collectanea Juridica*, i. 439 sqq.

<sup>4</sup> Cox, *Cases in Chancery*, i. 9; 2 Vesey, 52.

<sup>5</sup> See vol. i. 148.

<sup>6</sup> p. 554.

beyond this and have attempted absolute and precise definitions, appear, by the very act of definition, to have missed much of the signification and essential character of this jurisdiction. Thus Lord Kames identifies it with the maintenance of the whole moral law<sup>1</sup>. More modern writers at the other end of the scale have restricted it to the mere interpretation of established precepts; but neither of these conceptions represents with any truth its scope and nature. In the same way Blackstone, thinking first of one and then of another side of the Chancellor's jurisdiction, delivers himself of highly contradictory definitions, neither of which, taken by itself, can be said to constitute an accurate and complete description of equity. "Equity thus depending essentially upon the particular circumstances of each individual case," he writes, "there can be no established rules and fixed precepts of equity laid down, without destroying its very essence and reducing it to a positive law"<sup>2</sup>; while in another place he declares: "It has been said that a court of equity is not bound by rules or precedents but acts from the opinion of the judge, founded on the circumstances of every particular case. Whereas the system of our courts of equity is a laboured connected system, governed by established rules, and bound down by precedents from which they do not depart, although the reason of some of them may perhaps be liable to objection"<sup>3</sup>.

In a large number of cases, besides, in Lord Hardwicke's time, precedent, whether drawn from equity or the common law, was not strong enough to be a safe or sufficient guide and a new rule had to be established by his own authority<sup>4</sup>. Thus in the case *ex parte Prescott*<sup>5</sup>, August 16, 1753, he said: "No case has been cited to me, either on one side or the other, and therefore I must make a precedent and determine it on the rules of equity." Another such case was *Paget v. Gee*<sup>6</sup>, November 27, and December 4, 1753, involving the claim to rent from a lease by the representatives of the deceased owner, when he said: "The plaintiff's equity is so strong that I shall make a precedent." In *Hick v. Mors*<sup>7</sup>, March 1754, again, another new case, he had no difficulty in creating a

<sup>1</sup> Cf. also Ballow, *Treatise of Equity* (1756), p. 5. "Every matter, therefore, that happens inconsistent with the design of the Legislator, or is contrary to natural Justice, may find Relief here."

<sup>2</sup> *Commentaries* (1765), Bk i. 61.

<sup>3</sup> *Ib.* (1768), iii. 432.

<sup>4</sup> Ram, 268 sqq.

<sup>5</sup> 1 Atkyns, 230.

<sup>6</sup> Kenyon, *Notes of Cases*, end of vol. ii. p. 34; Leach, *Modern*, ix. 482; Ambler, 198.

<sup>7</sup> Kenyon, end of vol. ii. p. 117; Ambler, 215.

precedent and deciding that "any deed showing an intent to make a different disposition is a revocation of a will."

It was in the determination of new questions, in the establishment of new principles and in the development in new directions of rules already supported by earlier decisions, that Lord Hardwicke's positive achievement in equity chiefly consists. It is impossible within the limits of a biography to give even a general notion of these developments. Many of them are highly technical in character and belong essentially to the history of law, where they have long been embodied and where alone they can be studied with advantage by the legal student, and their importance and value properly appreciated in connection with later modifications and decisions. A short analysis, however, of some celebrated cases decided by Lord Hardwicke, chosen especially to illustrate his judicial methods and the varied scope and powers of his jurisdiction, may not be without interest for the general reader.

## II

i. *Hervey v. Aston*<sup>1</sup>. This was an appeal from a decree of the Master of the Rolls, pronounced in 1736, which came up before the Chancellor on April 29, 1737, who finding it a case of great importance and difficulty, directed a second argument before himself and the two Chief Justices and Mr Justice Comyns, finally giving judgment on June 5, 1738.

The chief question was whether, as the daughters of Sir Thomas Aston had married without the consent, declared by the terms of settlement a condition of their benefiting thereby, such a restriction on their marriage could be overruled in a court of equity.

The Chancellor first expressed his obligations to the learned Judges for their advice and assistance, "the right to which he esteemed one of the greatest privileges belonging to the person who presides in this Court." The great pains they had bestowed upon this case and the fact that he entirely concurred with them in opinion, might have excused him from taking up further the time of the Court, but as the case was one of great consequence and expectation and since the decree, which he intended to pronounce, would reverse that of the Master of the Rolls<sup>2</sup>, "for whose judgment he had the utmost deference," he had determined to lay his thoughts

<sup>1</sup> West, 350-437; 1 Atk. 361; also *Cases temp. Talbot*, 212; Comyns, 726; White and Tudor, i. 538 and 554. H. 832, ff. 7 and 72.

<sup>2</sup> Sir Joseph Jekyll, the Chancellor's uncle by marriage.

before the Court at large. He first disposed of the points concerning the construction of the deed and the intention of the testator, regarding which there was little doubt; all that remained was the point of equity. It had been said that by the Roman law all such conditions were made void with a view to encourage marriage and promote the propagation and increase of the people and that the reason of such a law extended to all countries. The Chancellor, however, showed that this was not Roman law till the reign of Augustus and then only on account of very special circumstances, the disturbed times, the proscriptions and the civil wars, which had driven men away and discouraged marriage. With regard to this law, the *Lex Julia et Papia Poppaea*, he quoted the *Origines Juris Civilis* of Gravina where the writer states: "Legem hanc non tam ratio, quam necessitas, expressit ab Octavio Augusto<sup>1</sup>." He further cited texts and passages which appeared "strong to the contrary" which, however, he made use of, not in order to decide the point but only to weaken this particular argument. For citations from the Roman law "are of no authority here, if the rules laid down in them are not shown to have been received"; and Counsel had not succeeded in proving that such rules had been accepted in the ecclesiastical courts which the Court of Chancery, exercising a concurrent jurisdiction, would desire to follow. In fact, there was a clear distinction between such portions and ordinary legacies. The former were created by deed and not by will, and consequently, "they never were or could be the subject of ecclesiastical jurisdiction or governed by the rules of the civil law." All the arguments therefore based on precedents from the Roman and civil law fell to the ground.

He passed quickly over the precedents in Chancery which had been cited by Counsel on both sides; for these had been so fully stated and distinguished by the Judges already that to enter into them again would be "only to repeat what they have said in a worse manner." Not one of them came up to the present case or was founded upon the principle it was sought to establish.

There remained, therefore, only the argument of the "general reason of the thing" and of "natural right" to discuss. It had been urged that laying the former arguments out of the case, yet the public good of every state required freedom in marriage. "But to this argument," the Chancellor replied, "I beg leave to

<sup>1</sup> Lib. iii. cap. 36.



oppose the general reason and policy of the common law of England, which has always been esteemed to be perfectly well calculated to support the public good of this country; and when topics of convenience and inconvenience are pressed, it is material to take notice that as much inconvenience may ensue from encouraging improvident matches as from restraining particular ones, especially in these times when clandestine marriages are become one of the growing evils, introductive of much calamity and ruin in families and complained of by considerate men as highly wanting a remedy. Let anyone compare the mischiefs which have arisen from disagreeable matches forced upon young persons in consequence of restrictions of this kind, with those mischiefs which have been produced by clandestine marriages contracted without the consent of parents and guardians, and then let him determine into which scale the argument of public good ought to be cast."

The natural right of children to be provided for by their parents was also urged by Counsel on behalf of the two daughters. This right was not, however, recognised by the law of England and had no connection with the present case, where the daughters were not disinherited but merely received smaller means of maintenance. Nor was the rule of the Court for construing such clauses restricting marriage *in terrorem* and therefore void, ever applied to anything but legacies left by any person whatsoever, and therefore all the arguments drawn from thence to support this supposed right of children to provision by their parents came to nothing<sup>1</sup>.

In conclusion he said: "Against all these general arguments, there is one general objection that has great weight with me. It was used long ago by my Lord Dyer<sup>2</sup> and is clearly and strongly expressed by my Lord Chief Justice Treby<sup>3</sup> in the case of *Falkland and Bertie*, 2 Vern. 337, wherein those other great men, my Lord Somers, and my Lord Chief Justice Holt, entirely concurred with him. 'Men's deeds and wills' (says he) 'by which they settle their estates, are the laws that private men are allowed to make, and

<sup>1</sup> See also *Reynish v. Martin*, 1746, 3 Atk. 331, where the rule as affecting legacies is shown by Lord H. to have been differently decided in the ecclesiastical courts and in Chancery, and in the latter the civil law not to have been entirely followed. Cf. also *Wheeler v. Bingham*, 1746, a somewhat similar case, where the legacies were ordered by H. to be paid to grand-daughters. H. 669, f. 101; 3 Atk. 364.

<sup>2</sup> Sir James Dyer (1512-1582), Chief Justice of the Common Pleas and author of the *Reports*.

<sup>3</sup> Sir George Treby (c. 1644-1700), Counsel for the Seven Bishops, Chief Justice of the Common Pleas, 1692.

they are not to be altered even by the King in his courts of law or conscience; we must take them as we find them.”

He then heard the three Judges on a technical point, which had arisen incidentally in the case, and afterwards pronounced his decree whereby the order made by Sir Joseph Jekyll was reversed and the portions in dispute declared not due or payable to the daughters, the plaintiffs.

The next case exhibits the Court of Chancery over-ruling a statute.

ii. *Le Neve v. Le Neve*<sup>1</sup>, December 9, 1747. In this case lands in Middlesex, a register county, had been settled by an unregistered deed upon a first marriage and were now settled with notice of the former settlement upon a second marriage by a registered deed, which gave a legal right over the former, owing to the Middlesex Registry Act, 7 Anne, c. 20 (1708). Notwithstanding the legal right and the express terms of the Act of Parliament, Lord Hardwicke decreed that the unregistered deed should be preferred in equity, on the ground that “the taking of a legal estate after notice of a prior right makes a person a *mala fide* purchaser,” that this constituted a species of fraud agreeing exactly with the definition of the civil law of *dolus malus*, and that it was a maxim also in English law that *fraus et dolus malus nemini patrocinari debent*.

“No equitable doctrine,” writes the author of White and Tudor’s selected cases, “is better established than that so clearly and forcibly laid down by Lord Hardwicke in the principal case that the person who purchases an estate (although for valuable consideration), after notice of a prior equitable right, makes himself a *mala fide* purchaser, and will not be enabled, by getting in the legal estate, to defeat such prior equitable interest.”

“This doctrine,” says Mr Justice Story, “as to postponing registered to unregistered conveyances upon the ground of notice, has broken in upon the policy of the Registration Acts in no small degree....It has, indeed, been greatly doubted, whether courts ought ever to have suffered the question of notice to be agitated as against a party who has duly registered his conveyance. But they have said that fraud shall not be permitted to prevail.”

In this case it was also incidentally decided by the Chancellor that notice to an agent or trustee is notice to the principal.

<sup>1</sup> H. 670, f. 7, and H. 665, f. 139; White and Tudor, ii. 175; Story, 255 sqq.; Snell, 29, 30; 3 Atk. 646; 1 Vesey, 64; Ambler, 436.

iii. *Garth v. Sir John Hynde Cotton*<sup>1</sup>, July, August, 1750, February 5, 1753.

This famous case involved the rights, powers and duties of trustees to preserve contingent remainders, and turned upon the wrongful cutting down of timber according to an agreement between the father of the plaintiff, the plaintiff being at the time unborn, and the defendant's grandfather, Sir John Hynde Cotton, who held the remainder after the sons of the elder Garth. The plaintiff now brought a bill to oblige defendant to refund £1000, his share in the spoil.

The case was an especially important one and presented special difficulties. The Chancellor after the first hearing took time to consider it, and when it came on again on August 10 of the same year he said: "Although I have taken a great deal of pains, I cannot yet form an opinion, from an apprehension of breaking in upon the rules of law, or establishing a dangerous precedent in a court of equity." Though the "Court had considered trustees to preserve contingent remainders as trustees to all other purposes, so as to be affected by breach of trust and all the consequences," yet he could "find no case where the Court has preserved the timber, though cut down by wrong, for the benefit of the contingent remainders."

He directed the case to be re-heard, but on its being argued again in Michaelmas term he was still unable to pronounce his decree. It was not till February 5, 1753, that his opinion was decided. But there was every reason for the delay. It was admitted at the Bar that the "case was an entirely new one upon which there was no precedent and which had never been brought into judgment before, and that the plaintiff had no remedy at law." "This made it necessary for the Court to proceed with great deliberation before a decision was made, which would be the first precedent after the invention of trustees to preserve contingent remainders, now about 100 years since, and which may have extensive consequences as to other cases that may arise."

His long judgment in this case is admirably constructed and discussed. He first pronounced his decree which was in favour of the plaintiff. He then showed that the stripping of the estate was wrongful, was collusive, and was damaging to the interests of the

<sup>1</sup> H. 834, ff. 203 and 275, with corrections apparently in the handwriting of Charles Yorke; 1 Vesey, 524 and 546 sqq.; 3 Atk. 751; 1 Dickens, 183, "copied from H.'s written argument"; White and Tudor, ii. 970; Spence, i. 625, ii. 948; Kerly, 259; Story, 341, 645.

In H., 767, f. 232, there is what appears to be an early opinion given on this case by Sir P. Y., December 29, 1729.

plaintiff. In the next place he went through the general argument that the plaintiff had a right to obtain relief in a court of equity which, after mature consideration, had convinced himself, and discussed the rights, powers and duties of trustees to preserve contingent remainders; and lastly he considered in detail and answered various objections, seven in all, raised for the defendant against the intervention of the court of equity.

To one objection, namely, that the relief sought by the bill was "contrary to all the rules of law which allows no remedy for waste to any person who has not an immediate reversion or remainder of inheritance vested at the time of the waste committed," he replied that were this true, it would not govern the present case, which depended upon principles of equity arising from the collusion between the ancestors of the parties, this constituting "an established ground of relief in the Court, even beyond, and sometimes contrary to, the rules of law<sup>1</sup>."

As he always, however, inclined to adhere, "as near as justice will admit, to the rule *aequitas sequitur legem*," he then proceeded to support the argument for relief by many analogous cases at common law. He next cited former cases in equity supporting his decree, in one of which, a very similar case, *Fleming v. Bishop of Carlisle*, he had himself issued an injunction against the cutting of timber.

Another objection, namely that an injunction to stay the waste before it was committed might be issued but not a bill to be brought afterwards for an account, was supported by the Counsel for the defendant by citing one of Lord Hardwicke's own decisions, that in the case of *Jesus College v. Bloom*<sup>2</sup>, but the Chancellor pointed out that the ground for dismissing that case was the fact that the College had a remedy at common law.

The sixth objection, which had not occurred to Counsel, he mentioned himself, and answered it.

Lastly, having dealt with the special and technical points raised for the defendant, he turned his attention to the general argument *ab inconvenienti* which he acknowledged "to be of weight, especially in a new case"; but he declared the inconveniences arising from making the new precedent not to be compared with those which would result from a decision that a contingent remainder man was without remedy in such a case. "What havoc would it make and

<sup>1</sup> *E.g.* "by the rules of law, fraud must be *proved*, or it must be apparent from the intrinsic nature of the transaction. In the Courts of Chancery fraud may be *inferred* from the attendant circumstances..." Spence, i. 625.

<sup>2</sup> See the case, p. 516.

what a licence would be proclaimed! Every remainder man in fee, though after never so many contingent limitations, might by collusion with the tenant for life or years in possession, or perhaps with his under-tenant, strip the estate and convert the value of it to their own use." An injunction alone would be no sufficient deterrent, for the mischief might be completed before the trustees were aware of it. Such a relief too, he added in conclusion, was all the more necessary "from the practice and abuses of the times into which we are fallen, when so many inventions and contrivances daily show themselves in courts of justice, to supply or to tempt or to impose upon the extravagance and necessities of tenants for life to the destruction of their families."

Lord St Leonards declared Lord Hardwicke's decree in this case to be one of the ablest ever delivered<sup>1</sup>.

iv. The next case, that of *Joynes v. Statham*<sup>2</sup>, October 29, 1746, though a leading one and of great importance, can be very shortly stated. This was a bill brought for the specific performance of a written agreement upon the face of which the plaintiff was to pay a rent of £9 a year. The defendant insisted, however, that by a parole agreement the plaintiff had consented to pay the taxes, which by mistake had not been inserted in the written agreement. According to the Statute of Frauds the admission of such parole proof was excluded. Lord Hardwicke, however, ordered the terms of the parole agreement to be carried out on the ground of the defendant's equitable right "to insist either on account of omission, mistake or fraud that the plaintiff should not have specific performance."

v. *Stapilton v. Stapilton*<sup>3</sup>, August 2, 1739, turned upon a curious incident in family history. The elder Philip Stapilton, who owned a considerable landed estate, had two grown up sons, Henry and Philip, both recognised to all intents and purposes as legitimate. Unfortunately there were doubts as to the legitimacy of the eldest and the father, in order to preserve the honour of the family and prevent disputes and litigation and to ensure that both sons, in any contingency, might be provided for, brought them into an agreement to make a division of the estate. The good intentions of the father, however, were not realised. Disputes arose after his death. An enquiry established the fact that Henry, the eldest son,

<sup>1</sup> White and Tudor, ii. 970 n.

<sup>2</sup> 3 Atk. 387; Snell, 623-6; Story, 510; White and Tudor, ii. 518 sqq.

<sup>3</sup> 1 Atk. 2; H. 667, f. 73 b; White and Tudor, i. 223 sqq.; Spence, ii. 288; Story, 76, 78, 193; also for former legal proceedings in this case, West, 12; and H. 658, f. 45; H. 682, f. 99 b.

was not legitimate, and he being now dead, his brother Philip sought, under these changed conditions, to upset the agreement and to obtain the whole estate at the expense of his nephew, Henry's infant son, the plaintiff. The Chancellor, however, decided on equitable grounds in favour of the agreement, declaring that the compromise of a doubtful right had been a reasonable one in the circumstances, and that the Court, when such was the case, and considering the consequences of setting aside the agreement, was "glad to lay hold of any just ground to carry it into execution and to establish the peace of a family." The principle was thus confirmed and established that "an agreement entered into upon a supposition of a right, though it afterwards comes out that the right was on the other side, shall be binding."

vi. *Chesterfield v. Janssen*<sup>1</sup>, June 18, 19, and 22, 1750; February 4, 1751.

This was a very celebrated case, often referred to, which involved the validity in equity of unconscionable bargains on post-obit securities with heirs expectant, and in which the Chancellor in his elaborate and learned judgment classified the various species of fraud against which equity could give relief.

The facts were as follows: The defendant had lent to Spencer, then 30 years of age, the sum of £10,000 on the promise of receiving £20,000 on the death of his grandmother, the old Duchess of Marlborough, then aged 80, which occurred soon afterwards. Two months later Spencer executed a new bond whereby he bound himself afresh to the defendant for the payment of the £20,000. His executors now sought to set aside the obligation on the ground of its being an unconscionable and usurious contract. The case seems to have first come before Lord Hardwicke on July 21, 1747, when he granted an injunction till the hearing and said: "This is the first case on a bill to be relieved on a direct post-obit, a bargain very fashionable but of very bad consequence....The Court has discountenanced such cases even where it is by way of wager, when they are for such extravagant sums. They have their rise from avarice and their foundation in fraud." He expressed himself as glad that the case had come before the Court, as it was a matter of great public and private importance, and announced his intention of hearing it with the assistance of the Judges.

<sup>1</sup> H. 665, f. 173; H. 669, f. 153b; 1 Atk. 301-354; 2 Vesey, 125; White and Tudor, i. 289; Spence, i. 625, 626; Kerly, 240-2; Story, 218-20 and elsewhere; Fonblanque, *Hist. of Equity* (1812), 81, 124, 143, 245, 253.

The case was heard by the Chancellor, the two Chief Justices, the Master of the Rolls, and Mr Justice Burnet on June 18, 19 and 22, 1750, when a postponement took place till February 4, 1751, in order that the original bond or a copy might be found.

On that day the Judges gave their opinions, which were against the relief sought by the plaintiff. The novelty of the case alone, the Chancellor declared, obliged him to add anything to their full and learned treatment of the points at issue. He reduced the questions to be decided to three; first, whether the first bond was void in law, by virtue of the statute of usury; second, if valid in law, whether it was contrary to conscience and relievable in equity; third, whether the new security given by Spencer, after the death of the Duchess of Marlborough, amounted to a confirmation and barred the plaintiffs from relief.

With regard to the first point, a pure question of law, the Judges advised that the loan did not come within the statutes of usury, and that there was no fraud proved. "My Lords the Judges are very clear in their opinion, the bond was not usurious; and if I had been doubtful myself in this point, I should have thought notwithstanding I was as much bound by their judgment now, as if I had sent it to be tried at law, in which case the Court always decrees consequentially to the trial<sup>1</sup>. I have no doubt about it and concur in opinion....It is a plain fair wager, and not within the statutes, because no loan." The distinctions in civil law had not been adopted in English law, and the case was analogous with a bottomry bond in which, as the Counsel for defendant had said, great profit had always been admitted on account of the risk incurred.

But on the second point there was much more to be said. The defendant's Counsel had urged that the act was that of a man of full age and capacity and without fraud, that the Court would not exercise a legislative power or set aside a legal contract on the ground of public convenience—for *misera est servitus ubi jus vagum*.

The Chancellor, however, declared the bargain undoubtedly unconscionable. There had been "deceit and delusion" practised upon the Duchess, from whom it was carefully concealed. He enumerated the various classes of frauds against which the Court would give relief, included in which was certainly that practised upon parents or ancestors in consequence of which they were induced to leave their fortunes to dangerous and artful persons and common adventurers who divided the spoil. "These cases show

<sup>1</sup> See p. 419.

what courts of equity mean, when they profess to go on reasons drawn from public utility. To weaken the force of such reasons, they have been called political arguments and introducing politics into the decisions of courts of justice. This was showing the thing in the light which best served the argument for the defendant, but far from the true one, if the word *politics* is taken in the common acceptation: but if in its true original meaning, it comprehends everything that concerns the government of the country, of which the administration of justice makes a considerable part, and in this sense it is admitted always. To apply this; thus far, and in this sense, is relief in a court of equity founded on public utility. Particular persons in contracts shall not only transact *bona fide* between themselves, but shall not contract *mala fide* in respect of other persons, who stand in such a relation to either as to be affected by the contract or the consequences of it; and as the rest of mankind, beside the parties contracting, are concerned, it is properly said to be governed on public utility<sup>1</sup>." The discouragement of prodigality and the prevention of the ruin of families, he declared, were objects which influenced the decisions of the Court. "Mr Attorney General said that it was vain and wild for the Court to proceed on such principles. If it had been said [that] it was ineffectual in many instances, I should have agreed thereto. But I cannot hold that to be vain and wild, which the law of all countries and all wise legislatures have endeavoured at as far as possible. The Senate and law-makers in Rome were not so weak as not to know that a law to restrain prodigality, to prevent a son running in[to] debt in [the] life[time] of his father, would be vain in many cases, yet they made laws to this purpose...happy if they could in some degree prevent it; *est aliquod prodire tenus*. It is said for the defendant that this would be to assume a legislative authority....What can properly be called such an assuming in this Court I utterly disclaim, but notwithstanding, I shall not be afraid to exercise a jurisdiction I find established, and shall adhere to precedents....Post obit bargains and junctim annuities have got their brokers and factors about this town, and I would willingly shut the door against such persons; and am not ashamed to own, I shall always be ready, consistent with the rules of equity, to correct such enormities.... The judgment I am going to give will not be founded upon this: but I have done it that the work of this day may not be misunderstood."

<sup>1</sup> See also vol. i. 127.



Unfortunately for the plaintiffs the third point raised was fatal to their cause. The new bond entered into by Spencer after the death of the Duchess was shown by the Chancellor to have no ground for relief in equity, for here there was no deception, fraud, or unfair circumstance which could be suggested, and it could not be upset. The final decree therefore was in favour of the defendant, but the Chancellor commended the plaintiffs for bringing the case into Court and refused the defendant his costs against them<sup>1</sup>.

The equitable principles laid down here, though sometimes criticised by later Chancellors, were thoroughly established and have remained ever since doctrines of the Court. The usury laws, however, have been abolished, and it has been enacted by Act of Parliament that no "*bona fide* purchase of a reversionary interest shall be set aside merely on the ground of undue value<sup>2</sup>." On the other hand, the principles established in this case have been adopted in the Moneylenders Act, 1900.

In the case of *Woodhouse v. Shepley*<sup>3</sup>, March 17, 1743, Lord Hardwicke's decree was based on much the same grounds. In that case a daughter, unknown to her father, who disliked and forbid the marriage, had entered into a bond with the defendant, which was to take effect a year after the father's death. Though the daughter was of full age, and though it could not be said that there was any fraud between the contracting parties, yet it was a fraud and imposition upon the parent, who had made a provision for her, believing in her submission to his will, and who, if he had known of the transaction, might not have done so. The Chancellor therefore decreed that the bond should be given up and cancelled, otherwise encouragement would be given to disobedience to parents and to "persons to lie upon the catch to procure unequal marriages against the consent of parents," and thus "bring great misfortunes into families."

vii. *Ward v. Turner*<sup>4</sup>, July 20, 1752. This was another leading case, of less general interest, but in which the important point was decided by the Chancellor that delivery is necessary for the validity of donations *mortis causa*, or gifts made by a person in peril of death, on the understanding that they shall be returned to him, should he recover; and further, that the delivery of papers, such as

<sup>1</sup> 1 Atk. 354; somewhat differently stated in 2 Vesey, 160.

<sup>2</sup> Kerly, 242.

<sup>3</sup> 2 Atk. 535.

<sup>4</sup> 2 Vesey, 431; White and Tudor, i. 390; Story, 395-7; Snell, 197, 199; *Law Quarterly Review*, ii. 444; 1 Dickens, 170; H. 663, f. 152 b.

the receipts for South Sea Annuity Stock, is not sufficient evidence of the gift.

After taking time to consider the case the Chancellor first examined the evidence of the facts which, he declared on the whole, went against the plaintiff; but he would not rest the case on this point, as it would necessitate sending it for a trial at law. He therefore passed on to consider the case from the point of view of equity and discussed it first by the light of the Roman law. He distinguished between the three kinds of donations *mortis causa*, defined these and showed that in the case similar to the one under review a complete delivery was required. He next sought in the practice of the ecclesiastical courts, not indeed for precedents, because their jurisdiction only extended to testamentary matters, but for some guiding analogy. A somewhat similar case had been there treated as a will, and this had a certain significance. Next, according to the common law, where these donations were introduced from the civil law, but not to be allowed further than the civil law had been received, it appeared that delivery was always considered necessary. Lastly, the practice of his own court indirectly supported the same act as essential to the validity of the donation. In *Snellgrove v. Baily*<sup>1</sup>, decided by himself, where the bond was delivered, he had held it to be a good donation *mortis causa*. He would not, however, go further and say that receipts, as in the present case, or the delivery of anything in the way of symbol were enough. The proceedings in the present case were rather of the nature of a nuncupative will, and to allow them would admit a greater breach on the statute of frauds than had ever yet been made. He therefore decreed that the gift, notwithstanding the strong evidence of the intent, was not sufficiently made. It was a somewhat nice and difficult point, and the Chancellor said: "If any doubt remains in anyone's mind, I will add (what I very seldom do, though it has been done by my predecessors), that I should be very glad to have this point settled by the supreme authority<sup>2</sup>; for it highly ought to be settled, if there is a doubt, considering so large a property of this kind."

"One might almost believe," says a writer in the *Law Quarterly Review*<sup>3</sup>, "that the Chancery lawyers of England were trying to circumvent Parliament by finding a place for the oral will under a new and assumed name. But Lord Hardwicke showed a determination to separate the two transactions and make delivery, as in

<sup>1</sup> 3 Atk. 214.

<sup>2</sup> The House of Lords.

<sup>3</sup> ii. 448.

other gifts, the striking feature of the new mode of death-bed transfers<sup>1</sup>.”

viii. { *Rumkissenseat v. Barker*<sup>2</sup>, December 21, 1737; December 4, 1739;  
           *Onychund v. Barker*, Michaelmas, 1744; February 23, 1745.

In these cases, in which the Court was petitioned to send a commission to India to take the answers of certain persons of the Gentoo religion, was involved the very important question of the validity of the testimony of heathen witnesses, unable to swear in the form prescribed by the law. This was a matter obviously very proper for the decision of the court of equity. It had never, however, yet come before it, and the Chancellor said: “I have often wondered, as the dominions of Great Britain are so extensive, that there has never been any rule or method in cases of this sort.” He declared the general rule to be that all persons who believed in a God were capable of an oath, the sanction depending on the belief in the anger of the Deity, if the party swore false, and this had been the reason for extending it to Jews in Sir Matthew Hale’s time.

He therefore directed an oath to be administered to the persons by commissioners in India, not “upon the holy evangelists,” as directed by law, but “in the most solemn manner.” He would not go further or lay down the form of the oath, as desired by the plaintiff, because of the possibility of directing a form contrary to the religious notions of the Gentoo people.

Accordingly, the commissioners having reported on February 12, 1742, that they had examined the persons on oath according to the usual and “most solemn” form obtaining amongst them, the whole question of the validity of such depositions was argued before the Chancellor and the three Judges, Lord Chief Justices Lee and Willes and Lord Chief Baron Parker, whom, as this was a new case, Lord Hardwicke had called in to his assistance.

The Counsel<sup>3</sup> for the defendant endeavoured to prove from various authorities that no oath could make a man a competent witness except that administered on the evangelists. Quakers had only been exempted by an express Act of Parliament. Sir Matthew Hale, indeed, in his *Pleas of the Crown*, contradicting the *dictum*

<sup>1</sup> See also Story, 397 *n.*, where Lord Eldon shows H.’s opinion here to have been modified later.

<sup>2</sup> 1 Atk. 19-50.

<sup>3</sup> This was Tracy Atkins, the reporter himself, and therefore we have a good account of the arguments of counsel in this case.

of Lord Coke that an infidel could not be admitted as a witness, had considered that the oaths and testimony of Jews and Turks were not necessarily to be rejected, because they did not swear according to the usual style of the courts in England. But Counsel drew a distinction between these who believe in a God and the natives of India, whose religions were so absurd and their ideas of the Deity so gross "that it would be shocking even to mention them." He derided the whole proceedings, which consisted in "meanly prostrating themselves at the foot of a priest and calling upon the creature instead of the Creator," and which could not "possibly raise any other emotions but those of contempt and ridicule. It is said, too, that if such person shall swear anything contrary to truth, *that he will be esteemed a vagabond*. I do not know how far the people of India may be deterred by such an apprehension, but I am confident great numbers of persons here would be so far from thinking this a punishment, that, if the only effect of forswearing themselves was being a vagabond, they would be more inclinable to break an oath than to keep it."

The Attorney and Solicitor General, in the course of long and interesting arguments, replied that the natives did believe in a God, that they understood the sanctity of oaths and were accustomed to use oaths to attest facts, and that the Gentoos were already admitted as witnesses in the court of Calcutta. They appealed to other precedents and authorities, including Grotius, who admitted even the oath to false gods. Such testimony was a matter of necessity. It was of the greatest moment that we should have commerce and correspondence with all mankind. Both trade and policy required it, and in dealings of this kind it was of infinite consequence that there should be no failure of justice.

On the conclusion of the arguments the Chancellor said: "My Lord Chief Justice, Lord Chief Baron, and myself are of opinion, the cause should stand over till next term that it may be properly considered, this being a point of the utmost consequence," and meanwhile directed a search to be made for precedents concerning the oaths of Jews.

The case came up for judgment on February 23, 1745, when the three Judges each gave their opinion in turn, and all agreed that the evidence and oath ought to be admitted, that the form of taking the oath might be varied, and that the rules of evidence, being artificial and framed for convenience, must yield to natural justice.

The Chancellor then delivered his decree: "As this is a case

not only of great expense but of great consequence, it will be expected that I should not give an opinion without assigning my reasons for it at the same time."

In answer to the first objection of defendant's Counsel that the commissioners had not followed the direction of the Court, as they had not shown what were the principles of the Gentoo religion, he disclaimed any intention of entering into so wide a field as the history of this religion, concerning which there were already trustworthy accounts written, but merely asked to be assured that the people believed in a God and His providence. This had now been done, and there remained only the question whether such an oath was obligatory and whether such evidence was admissible. Bishop Sanderson, in *De Jurisjuramenti Obligatione*, had said: "*Juris juramentum est affirmatio religiosa*"—"all that is necessary to an oath is an appeal to the Supreme Being, as thinking Him the rewarder of truth and avenger of falsehood: *vide* the same author, pp. 5, and 18. This is not contradicted by any writer that I know of but Lord Coke, who has taken upon him to insert the word *Christian*, and is the only writer that has grafted this word into an oath." All other writers concurred including Puffendorf, *De Jure Naturae et Gentium*, lib. 4, ch. 2, sec. 4, and Tillotson, vol. i of his *Sermons* [1728], p. 189, who had there said that obligation of an oath "depended wholly upon the sense and belief of a Deity." Regarding the form of the oath, it was laid down by all writers that the outward act was not essential to the oath, and Tillotson in the same sermon had said that the ceremonies used in taking oaths had always been matters of liberty.

In the second place, respecting the question of the admissibility of such evidence in special circumstances, the Chancellor said: "The Judges and sages of the law have laid it down that there is but one general rule of evidence, *the best that the nature of the case will admit*." The Judges depart from strict rules first on the ground of absolute necessity, then on that of presumed necessity. "In the case of writings subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed; where an original is lost, a copy may be admitted; if no copy, then a proof by witnesses who have heard the deed, and yet it is a thing the law abhors to admit the memory of man for evidence ([Leach,] 1 *Mod[ern]* 4)." A tradesman's books were admitted as evidence, also hearsay testimony, and the courts allowed evidence for the Crown without oath.

Thus it was impossible to maintain the rigid limits urged by the defendant's Counsel on the question of this evidence or to impose Lord Coke's narrow views of the common law of England upon the whole world. Lastly, such restrictions would lead to manifest injustice. It was not contested that persons of the Gentoo religion were admitted to give evidence in the courts of their own country. Should therefore one party deprive the other of evidence merely by a change of domicile and because he sued in an English court? Again, should a heathen who brought an action here at common law have a perpetual injunction issued against him, because he could not be admitted to put in an answer according to his own form of oath? In general, courts of law in England would give credit to the sentences of foreign courts, otherwise the latter would not allow our determinations to be valid<sup>1</sup>. "So in matrimonial cases, they are to be determined according to the ceremonies of marriage in the country where it was solemnized."

He concluded by observing: "It has been the wisdom of all nations to administer such oaths as are agreeable to the notion of the person taking, and [it] does not at all affect the conscience of the person administering nor does it in any respect adopt such a religion. It is not near so much a breaking in upon the rule of law, as admitting a person to be an evidence in his own cause." He decreed, therefore, that the depositions should be read as evidence, and the important principle was established henceforth that the evidence of non-Christian persons, who yet believe in a deity and are sworn according to their own ceremonies, is admissible in the courts of justice.

Subsequently the prisoners taken at Carlisle in the Rebellion were allowed in their trial in 1746 to take the oath according to the Scottish manner, contrary to the opinion of the Attorney General and Chief Justice Willes, but in conformity with the spirit of this decree<sup>2</sup>.

The whole of the cause, according to Burke, "the most solemnly argued of any within the memory of man<sup>3</sup>," in which the long and learned arguments have been here very imperfectly reproduced, is an excellent example of the legitimate and expansive influence of equity upon the restricted and exclusive doctrines of

<sup>1</sup> But see below, p. 476.

<sup>2</sup> H. 241, f. 35, where is an account of the whole from Lord Ch. Baron Parker.

<sup>3</sup> Impeachment of Warren Hastings, *Works* (1826), xiv. 376.

the common law. "Had you been in town," writes Charles Yorke to his brother Philip, "you would have been pleased in Chancery to have heard the arguments...before the Chancellor and the three chiefs. It proceeded so much upon general reasoning that it would have entertained you<sup>1</sup>."

ix. *Penn v. Lord Baltimore*<sup>2</sup>, 1745, 1750.

This, the last great leading case for which we have space to quote, is perhaps the most striking of all as an illustration of the enormous interests and extensive jurisdiction covered by the Chancellor's authority. He here decreed the specific performance of articles providing for the settlement of a dispute concerning the boundaries of Maryland and Pennsylvania, and establishing the power of the Court over property outside its jurisdiction by a decree *in personam*.

The case took several days in arguing, and on the former hearing in 1745 it was ordered by the Chancellor to stand over, that the Attorney General might be made a party as representing the Crown, to give his consent. The Chancellor now, on May 15, 1750, after hearing the arguments and taking two days to revise his notes, pronounced his decree.

The general ground of relief, he stated, was based on the ordinary equity dispensed by the Court, the case coming under one of the most common and important "great heads," that of specific performance. Next, regarding the point of jurisdiction, it was certain that decisions concerning questions of boundaries belonged to the King and Council. The Chancellor's power to compel specific performance was not based on this but on the fact that the bill was founded on articles executed in England under seal for mutual consideration, which gave jurisdiction to the King's courts, whether law or equity, whatever might be the subject-matter; that the Court acted *in personam*, and that the party who was within the jurisdiction of the Court was bound in conscience.

Nor was the fact that the Court could not enforce its decree *in rem* an objection against making a decree *in personam*. In the case of Lord Anglesey, he had himself decreed a settlement of his estate in Ireland which it was impossible to enforce *in rem*, but the

<sup>1</sup> H. 12, f. 141.

<sup>2</sup> H. 664, f. 68; H. 665, f. 170; Jodrell in Hargrave MSS, 383, f. 50; and H. 671, f. 167; H. 831, f. 138; H. 834, f. 194; H. 561, f. 119 (the Chancellor's notes of his decree); White and Tudor, i. 755; Kerly, 177; Spence, i. 427, ii. 6; Snell, 43-5; 1 Vesey, 444, and Belt, *Supplement*, 194; Ridgeway, 332.

party being in England, he could enforce it by process of contempt or sequestration. He discussed and replied to a great number of further objections which it is not necessary to follow. One turned on the difficult point of what constituted a settlement or true occupation of territory. It had been contended that an occupation was only such when recognised by the Crown. The Chancellor, however, disagreed, saying: "In those countries it has always been taken, that that European country which has first set up marks of possession has gained the right, though not formed into a regular colony....I will say once for all that long possession and enjoyment, peopling and cultivating countries, is one of the best evidences of title to lands, or district of lands, in America that can be, and so have I thought in all cases since I have served the Crown; for the great beneficial advantage arising to the Crown from settling etc. is that the navigation and commerce of this country are thereby improved. Those persons, therefore, who make these settlements, ought to be protected in the possession, so far as equity and law can."

He decreed finally a specific performance of the agreement without prejudice to the rights of the Crown.

He had prefaced the delivery of his decree by saying: "I directed this cause to stand over for judgment, not so much from any doubt of what was the justice of the case, as by reason of the nature of it, the great consequence and importance, and the great labour and ability of the argument on both sides, it being for the determination of the right and boundaries of two great provincial governments and three counties; of a nature worthy the judicature of a Roman Senate than of a single Judge; and my consolation is, that if I should err in my judgment, there is a jurisdiction, equal in dignity to a Roman Senate, that will correct it."

Lord Hardwicke's decision in this great case established the equitable maxim: *Equity acts in personam*<sup>1</sup>.

These leading cases are among the most characteristic and important of Lord Hardwicke's decisions. Space does not admit of further quoting, but we may enumerate a few others of special interest. *Casborne v. Scarfe*<sup>2</sup>, January and March 1738, on the equity

<sup>1</sup> See also other similar cases decided by Lord H. ; *Foster v. Vassal*, 3 Atk. 580; and *Angus v. Angus*, West, 23.

<sup>2</sup> H. 832, f. 121; Story, 663; White and Tudor (Snow), ii. 6, 30; 1 Atkyns, 603; Kerly, 194; West, 221; Annaly, 399; Snell, 334.



of redemption in land, *Wortley v. Birkhead*<sup>1</sup>, August 3, 1754, on tacking in mortgages, *Row v. Dawson*<sup>2</sup>, November 27, 1749, on assigning of choses in action, and *Ryall v. Rowles*<sup>3</sup>, on the rights of general creditors opposed to those of mortgagers, were all leading cases establishing important principles of a technical character. In *Lane v. Page*<sup>4</sup>, June 15, 1754, the rule that an appointment under a power, if made for sinister purposes, is void, was established. In *Barret v. Lun*<sup>5</sup>, 1753, there was an interesting construction of an ambiguous will. In *Green v. Rutherford*<sup>6</sup>, May 23, 1750, among other points decided, the Chancellor pronounced for his own jurisdiction in the case, which concerned the presentation of a living in the patronage of St John's College, Cambridge, and against that of the Visitor, the Bishop of Ely, on the ground that the dispute turned upon the interpretation of a will. The great case of the *Bishop of Sodor and Man v. Earl of Derby* and *Earl of Derby v. Duke of Atholl*<sup>7</sup>, February 8, 1749, July 15, 1751, involved various intricate questions connected with the constitutional position of the island. The Chancellor laid down here that the Isle of Man was part of the Crown, but not of the Realm, of England, and that the laws of England did not extend thither; and with regard to his own jurisdiction, that nothing should be presumed to be outside it which is not shown to be so and to come within that of another court. In *Swannock v. Lyford*<sup>8</sup>, July 17, 1741, an important decision respecting dower was given. In *Wildiges v. Keeble*<sup>9</sup>, March 1, 1744, he pronounced a decree in an intricate case concerning the inheritance to landed property, the result of the statute dishabilitating papists, and explained the law on this point. In *Willoughby v. Willoughby*<sup>10</sup>, November 21, 1755, June 19, 1756, he gave an

<sup>1</sup> 2 Vesey, 571; 3 Atkyns, 809; Story, 267 sqq. and 1022; Spence, ii. 737-8; Snell, 354.

<sup>2</sup> 1 Vesey, 331; White and Tudor, i. 93; Spence, ii. 852 sqq.

<sup>3</sup> H. 883, ff. 14, 225, H. 834, ff. 135 sqq.; 1 Vesey, 348, 375; 1 Atkyns, 164; White and Tudor, i. 96; Spence, ii. 356; Snell, 90; Kerly, 206; and see also *West v. Skipp* in 1 Vesey, 239; and Belt's *Supplement*, 130.

<sup>4</sup> Ambler, 233; Kerly, 210; 2 White and Tudor, 314-5, 321.

<sup>5</sup> Kenyon, *Cases in K.B., &c.*, ii. at end of volume, p. 9.

<sup>6</sup> H. 663, f. 61; H. 49, f. 241; H. 53, f. 127; 1 Vesey, 462; Story, 795.

<sup>7</sup> H. 663, f. 111; H. 831, f. 150; 1 Vesey, 202; 2 Vesey, 337; 1 Dickens, 129; 2 Spence, 11. Lord Campbell's *résumé* of this decree (*Lives of the Ch.* v. 59) is very inaccurate. He puts several sentences into the Ch.'s mouth which were never uttered.

<sup>8</sup> Ambler, 6; 2 Spence, 661; Story, 255, 266, 412.

<sup>9</sup> Jodrell's report in Hargrave MSS, 383, f. 86.

<sup>10</sup> H. 834, f. 438; Story, 650; Ambler, 282; 1 Spence, 514; 1 Durnford and East, 763, from the above MS; *Collectanea Juridica*, i. 337.

important judgment on the technical questions of joint ownership and attendant terms. Several cases of copyright came before him which, being new ones, have some interest, though no great principles appear to have been established. In *Gyles v. Wilcox*<sup>1</sup>, March 6, 1741, Lord Hardwicke laid down that an abridgement, if a genuine one and "a work of judgment," might be considered a new book. It was a mere question of fact to be settled only by reading the works, "a task," he added with some prudence, "it would be hardly proper for him to do." He therefore, following the practice in the House of Lords, where merchants were often called in to report on perplexed and intricate matters of accounts, ordered two persons of learning and ability to examine the works and give their opinion. This judgment has been often criticised and certainly appears to expose an author to spoliation, but a more definite decision in his interests would perhaps have gone too far and limited too strictly the ordinary give and take in literary property<sup>2</sup>. On the other hand, in *Tonson v. Walker and Marchant*<sup>3</sup>, April 25, 1752, he granted an injunction against the defendants, who had published Newton's edition of Milton with a few fresh notes by themselves. In *Pope v. Curl*<sup>4</sup>, June 17, 1741, Lord Hardwicke also laid down for the first time that a letter is not a gift to the receiver, and that he has no right to publish it. "It is only a special property in the receiver; possibly the property of the paper may belong to him, but this does not give a license to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer." In *Blackwood v. Harper*, December 8, 1740, an important judgment on the copyright in prints was given<sup>5</sup>.

Several cases also concerning the privileges of ambassadors came before him, of which the most important perhaps was that of *Re Count Haslaing*, where strict proof was required that the person arrested was a *bona fide* servant<sup>6</sup>. Such cases came under the Chancellor's jurisdiction by the statute of Queen Anne<sup>7</sup>, and they were considered fit subjects of decision by a high tribunal as involving the "law of nations."

<sup>1</sup> 2 Atk. 141; Barnardiston, 368; Kerly, 259.

<sup>2</sup> See also *Gee v. Pritchard*, 2 Swanston, 414.

<sup>3</sup> H. 664, f. 101; 3 Swanston, 672; Story, 602.

<sup>4</sup> 2 Atk. 341; Story, 609.

<sup>5</sup> 2 Atk. 93; other cases mentioned in Holliday, pp. 218-20 and 237.

<sup>6</sup> 1 Dickens, 274; cf. also *Holmes v. Gordon*, H. 655, ff. 9 and 16; Annaly, 3.

<sup>7</sup> See above, vol. i. 140.

He consistently avoided giving any opinions regarding the relations between King and people and refused to define or lay down rules on such high matters. The Revolution had created a general conviction that such questions were no longer suitable for legal or parliamentary discussion, but were to be settled by the compromise of contrary principles and gradually solved in accordance with the changing necessities of the times. Thus we find the Chancellor saying in *ex parte Armitage*, January 21, 1756, concerning the altering of a highway, in which case the question of the rights of the Crown had been introduced:—"It is a wide field, and the ancient precedents and authorities have gone a great way. To enter into it would be, to a certain degree, like entering into the learning of the old law concerning *non obstantes*, or the power of the Crown to lay charges on the subject. Much of this is brought into obscurity by disuse; for the prudence and temper of modern times, and the frequent meetings of Parliament, have introduced the doing of many of those things by the King in Parliament, that is by Act of Parliament....These are points which I think the ordinary courts of law should not enter into, unless compelled by necessity of administering justice<sup>1</sup>."

The full importance of the cases which have been quoted and of the principles established by Lord Hardwicke, can obviously not be thoroughly appreciated without some technical knowledge of the subject and without following them up through all their subsequent developements in the later history of equity<sup>2</sup>. Such a task however would be equally beyond the scope of a biography and the powers of the present writer, and it must now suffice, in order to afford a more complete view of Lord Hardwicke's judicial decrees, to supplement the great leading cases already cited in the present chapter by some others not so important or decisive in themselves, but which illustrate in different ways the great variety, extent and responsibility of his jurisdiction.

<sup>1</sup> H. 834, f. 421.

<sup>2</sup> These developements can be studied in the works of any of the well-known authorities on equity, such as Spence, Story, Snell, White and Tudor, or Fonblanque. Some instances in which Lord H.'s decrees have been departed from in later times may be found in Belt, *Suppl.* to Vesey, 84, 111, 163, 170, 188, 413; MS notes by Francis Hargrave in his copy of 1 Vesey, 230, 425 in Brit. Mus.; 1 White and Tudor, 783; Kerly, 216; Story, 150, 235, 368, 397, 845, 850, 858; Spence, ii. 157-9, 202, 231, 379, 479, 498; West, 460; MS note by Hargrave in his copy in Brit. Mus. of 3 Atk. 264; Ram, 103, 107; 2 Durnford and East, 73.

## III

The Chancellor's time was not always occupied with the consideration of such important matters, as those involved in *Penn v. Lord Baltimore*. He was sometimes called upon to deal with flighty heiresses, and to compel refractory schoolboys to return to their studies<sup>1</sup>. His authority was often invoked to settle connubial disputes. The unfortunate differences, for instance, between Sir Francis Head and his wife, came before him on several occasions between February 12, 1746, and July 3, 1747<sup>2</sup>.

"The peace of families" was a consideration which greatly influenced his decisions. The Court was the guardian of family interests and family virtue. In *Priest v. Parrot*<sup>3</sup>, February 8, 1751, he refused to order the payment of a bond, granted by the defendant to the plaintiff, who had lived in his house, been seduced by him and who had caused a separation between him and his wife. He drew a clear distinction between such a case and that, in which the parties guilty of misconduct were single persons, between whom there was a promise or possibility of marriage, and who violated the peace and interests of no family. The case of *Robinson v. Cox*<sup>4</sup>, July 1741, in which the Chancellor set aside a promissory note of £1000, granted by the petitioner to the defendant, an immoral woman, was decided on much the same grounds, his decree being based on the presumption of artifice and fraud, and intended to "discountenance the offence and to destroy the credit" of such securities. In *Beckford v. Tobin*<sup>5</sup>, Nov. 4, 1749, speaking of the disadvantages under which an illegitimate child came before the Court, he said this was "firstly from the rule of law considering a natural child as no relation, having indeed no civil blood; secondly, that it is not fit for a court of justice to give the same countenance to such children as in the case of legitimate children; and to discountenance practices of that kind, the Court has taken them to be out of all such provisions."

With "the peace of families" was necessarily and closely connected the security of landed estates, and the quiet enjoyment of them by the rightful heir. The protection, therefore, given by the Court, not only to infants over whom it had a special jurisdiction, but even to young heirs, when adults, against their creditors, was

<sup>1</sup> 3 Atk. 721; 1 Dickens, 149.

<sup>2</sup> H. 669, f. 75; 3 Atk. 295 and 547; 1 Vesey, 17; Belt, *Suppl.* 18.

<sup>3</sup> H. 664, f. 26; 2 Vesey, 160; Kerly, 196.

<sup>4</sup> H. 665, f. 44 b; H. 671, f. 32 b.

<sup>5</sup> 1 Vesey, 308.

very marked. In *Brook v. Gally*<sup>1</sup>, April 25, 1740, a schoolboy had been supplied with viands, liquors, coffee and jellies by the defendant, and in five months a debt of £59 had been incurred. The defendant had concealed the transaction from the schoolmaster and, on the boy coming of age, had obtained from him a note for the amount, which the youth's executors now sought to cancel. The Chancellor declared the case to turn upon two sets of transactions; first, upon those which had taken place before the youth's coming of age, and secondly, upon those subsequent to that event. The former transactions could clearly not be countenanced in a court of equity; for "the law lays infants under a disability of contracting debts, except for *bare necessities*, and even this exemption is merely to prevent them from perishing<sup>2</sup>." As to the second point, the taking of the note, so soon after the youth's attaining his majority, was very suspicious, and such a circumstance was always a "material ingredient to direct the conscience of the Court." Besides, there was no account rendered, and therefore this was a note without any previous consideration, to establish which would be contrary to the rules of the Court. He continued: "If the care and education of youth have been thought of consequence in former ages,...to give any encouragement to a transaction of this kind would entirely defeat that care and be extremely fatal to the health, the manners, and everything else that is valuable in young persons. The case the nearest to this, is the imposition upon young heirs, in the life-time of their ancestors, who, though of full age at the time of the fraud, yet, if his [their] necessities, extravagances or the severity of his [their] parents, made him [them] submit to the imposition, this Court will give relief merely to discourage attempts of this nature." He thought it "necessary to make an example of the defendant in Westminster Hall, as it is so near a neighbour of Westminster School," and decreed that the bill should be cancelled, while at the same time he would not debar the defendant from bringing an action at law for goods sold.

In *Freeman v. Bishop*<sup>3</sup>, April 27, 1740, a young heir of age, who had incurred debt by buying horses and borrowing money from the defendant, obtained relief. In *Lawley v. Hooper*<sup>4</sup>, November 19, 1745, already quoted, the Chancellor cancelled the purchase of an

<sup>1</sup> Jodrell in Hargrave MSS, 412, f. 97; H. 667, f. 93; 2 Atk. 34; Barnardiston, 1.

<sup>2</sup> It would seem, therefore, that the signification of the term "necessaries" has been greatly extended in later times.

<sup>3</sup> 2 Atk. 39; Barnardiston, 15.

<sup>4</sup> 3 Atk. 278; above; p. 441.

annuity of £150 for £1050, from a young man imprisoned in the Fleet for debt, as being an attempt to evade the usury laws. Another similar case was *Stanhope v. Cope*<sup>1</sup>, where the inheritance of property had been anticipated. The Chancellor declared that "he had a great aversion to contracts of this kind, and would always relieve against them, when it was in his power." The parties, by his direction, came to an agreement, by which the capital was repaid with legal interest.

In all these cases the condition of financial embarrassment, and the helplessness of the borrower, were very strong considerations in the Chancellor's decrees; and in the last case quoted, he observed that the plaintiff's evidence had been very deficient in not proving that he was in distress at the time when the bargain was made, "which, had he done, it would have altered his way of thinking."

For the same reasons, the rights of heirs to estates under trusts were very jealously safeguarded by the Court, and the conduct of trustees very strictly supervised. The Chancellor discountenanced all payments to trustees out of the estate for their services, and all private financial arrangements between the trustee and the beneficiary of the trust<sup>2</sup>. In *Pomfret v. Murray*<sup>3</sup>, October 27, 1740, a sum of £300, which the trustees had obtained from the defendant for performing their duties, was disallowed by him, although he would not declare such a payment unjustifiable in all cases, on the ground that "the Court considered trusts as honorary things; they burden the party in honour and in their nature are not things, which [they] should make an advantage of." He further explained the relations between guardians and wards, in *Hylton v. Hylton*<sup>4</sup>, July 25, 1754, showing the special necessity of preventing the guardian or trustee from taking any advantage immediately on the ward's coming of age, and pointing out the evils which might easily follow from such a practice. The whole relationship of trustee and ward, he said, depended on the "debt of humanity that one man owes to another, as every man is liable to be in the same circumstances<sup>5</sup>."

Infants, besides being defended by the Chancellor from their creditors and trustees, sometimes sought his protection against

<sup>1</sup> H. 671, f. 85; 2 Atk. 231.

<sup>2</sup> *Bickerton v. Ryder*, H. 671, f. 111.

<sup>3</sup> H. 671, f. 14; H. 665, f. 59; Leach, *Modern*, 230; 2 Atk. 58, cited as *Ayliffe v. Murray*.

<sup>4</sup> 2 Vesey, 548-9; Story, 208.

<sup>5</sup> Another case involving a similar agreement decided by Lord H. in 1745, and cited in this cause, was *Pierce v. Waring*, in which Lord H. had written in his notes: "To be absolutely set aside, being between a guardian and his ward just come of age, and on reason of public utility."

their wives. *Hill v. Turner*<sup>1</sup>, December 20, 1737, was a case in which an infant, after being made drunk at an ale-house near the Fleet, had been "drawn in to marry a woman in mean circumstances and of bad character," who had now obtained an order of the ecclesiastical court against him for alimony. Lord Hardwicke gave the plaintiff relief, and issued an injunction, stopping the wife from proceeding further in the ecclesiastical courts. He took the opportunity to explain the special jurisdiction of his Court over infants, which added greatly to the Chancellor's responsibilities. "This Court hath the care and ordering of infants, and though, by Act of Parliament, the Court of Wards had a particular power over them and lunatics, yet in every other respect, the law as to infants continued as before: and as the statute of the 12 Car. 2, c. 24 has dissolved the Court of Wards and Liveries, the power of this Court over infants is resulted back to them again. The law of England is favourable to infants. No decree shall be had against them here, but what they may show cause for, when they come of age. This Court will make strangers accountable to infants, in case they take upon them to receive the profits of their estates. This Court can also ascertain the *quantum* of an infant's maintenance, and to whom it shall be paid; and this is conclusive to all parties." In *Butler v. Freeman*<sup>2</sup>, he said:—"This Court does not act on the foot of guardianship or wardship; the latter is totally taken away by the statute Car. 2; and without claiming the former, and disclaiming the latter, has a general right, delegated by the Crown as *pater patriae*, to interfere in particular cases for the benefit of those who are incapable to protect themselves." The Court would protect their interests even against the father but, for it to exercise this jurisdiction, there must be a suit instituted before the Chancellor<sup>3</sup>. Thus all infants, who needed it, could claim in a general sense the protection of the Chancellor. Then further, when once an application had been made in their interests, their education, estates, general conduct and marriage became, in a more special sense, subject to his supervision. Before the passing of the Marriage Act, and while Fleet marriages were still possible, several cases occurred of wards of Chancery being inveigled into discreditable alliances. The chief delinquents were always severely punished by Lord

<sup>1</sup> 1 Atk. 515; West, 195; and see further, below, p. 475.

<sup>2</sup> Story, 913; Ambler, 302.

<sup>3</sup> See also Lord H.'s remarks on this subject in *Hughes v. Science*, *ib.*; 2 Atk. 173, and below, p. 470.

Hardwicke, and though the marriage could not be annulled, the woman's property could always be tied up outside the control of the parties. This was done in the case of *Edes v. Brereton*<sup>1</sup>, June 1, 1738, and the chief culprits, Lord Ossulston, Pearson, the husband, and a maidservant, guilty of the contempt of court, were all committed to the Fleet prison. A scandalous instance of such contempt, owing to the position and profession of one of the guilty parties, came before the Chancellor, in April 1741, in *Hughes v. Science*<sup>2</sup>, when Mitchell, a Justice of the Peace and a barrister, the chief contriver, together with the husband Science, a schoolmaster and watchmaker, were committed to the Fleet for procuring the marriage of Miss Hughes, a ward of the Court, with a fortune of £30,000. "It was the most flagrant contempt of the Court," says the reporter, in terms of just indignation, "that ever appeared before it, which was the reason of the Chancellor's setting a mark upon him." He was subsequently dismissed from the commission of the peace, and prohibited from practising at the Bar<sup>3</sup>.

These cases show how greatly the Chancellor's decisions, when these were not already fixed by established rules and interests, or by the necessity of securing uniformity in judicial proceedings, were influenced by moral considerations. The suitors, who came before him to obtain equitable relief, must do so with clean hands. "Whoever comes into a court of equity," he declared, "to supply legal defects, must come on equitable grounds, and show everything to be fair<sup>4</sup>." The Chancellor's Court remained a court of equity and conscience, and the least suspicion of fraud, or the slightest violation of the social law, was often sufficient to cause the refusal of a petition. But Lord Hardwicke did not go further or impose penalties for breaches of the moral law, outside these limits. He repudiated the notion that the Court should give punishment for wrong-doing, and declared that he sat, not "to determine upon the moral character and moral behaviour, but...upon the rights only of parties<sup>5</sup>." The morality laid down in the Court of Chancery differed from that imposed by the ecclesiastical tribunals. The former was limited to social necessities, and connected and bound up closely with such considerations as the peace and stability of families, the security of property and, generally speaking, with law and order. Though thus restricted, it was perhaps none the

<sup>1</sup> West, 348, from Lord H.'s note-book.

<sup>2</sup> 2 Atk. 173; Ambler, 302 n.; below, p. 539.

<sup>3</sup> See also *Brandon v. Knight*, 1 Dickens, 160.

<sup>4</sup> In *Att.-Gen. v. Scott*, 1 Vesey, 413.

<sup>5</sup> In *Graydon v. Hicks*, 2 Atk. 16.



worse, or less pure, for this connection with mundane interests and social policy. The clearest illustration of the divergence of moral view between the two jurisdictions is exhibited by their respective treatment of the act of marriage. The ecclesiastical courts considered nothing but the abstract religious and binding character of the rite, and, neglecting the practical results to morality involved, supported, and indeed by their inaction encouraged, alliances contracted under the most fraudulent and most infamous circumstances, and disobeying even their own canon law took no steps to control the clerical scandals connected with the notorious Fleet marriages, whereby matrimony, not only from the social but also from the religious point of view, was degraded into the lowest farce, and made an instrument for the propagation of vice and misery<sup>1</sup>. The Court of Chancery, on the other hand, putting aside this exclusive and narrow ecclesiastical conception of marriage, and regarding it as the fundamental basis of the family, of society and of the state, made every effort to correct these scandals and to minimise, as far as possible, the evil results of such irregularities. Injunctions were issued against the proceedings in the ecclesiastical courts, where those, who had succeeded in drawing young persons into these discreditable alliances, found every assistance in further preying upon their victims; and at last, by Lord Hardwicke's efforts and influence, a great Act was passed, which finally put an end to these disgraceful transactions, and embodied for the first time in English law the social and practical, as well as moral, conception of marriage, upheld in the Court of Chancery<sup>2</sup>.

Similar considerations influenced his decision in *Da Costa v. De Pas*, May 8, 1754, in which he held Christianity to be part of the law of England<sup>3</sup>. In this case, a Jew had left £1200 to establish a Jesuba, or seminary, for the instruction of youth in the Jewish religion. The bequest, though not void in law, was one, the Chancellor said, which the Court could not tolerate, and the money therefore, now vesting in the Crown, was ordered to be expended in providing a preacher for the Foundling Hospital, a decision which, it must be feared, scarcely carried out the wishes of the testator. On the other hand, bequests for the charitable maintenance of poor Jews were always upheld.

<sup>1</sup> See a flagrant case, *Hill v. Turner*, below p. 475; and above, pp. 58 sqq.

<sup>2</sup> *Ib.* pp. 74 sqq.

<sup>3</sup> Twiss, *Life of Lord Eldon*, ii. 483; Ambler, 228; 1 Dickens, 258; H. S. Q. Henriques, *The Jews and the English Law*, 19 sqq.

We must now quote a case which hardly appears to reach the high standard of practical morality and pure justice, exhibited in Lord Hardwicke's decisions; but which is important, as showing the attitude of the law towards slaves, and the opinion of the Chancellor himself upon their status. It was commonly believed, on the authority of a *dictum* of Chief Justice Holt, circulated at the Bar but never officially reported, that once a slave touched the free soil of England, his fetters fell from his limbs and his bondage from that moment ceased. It was an inspiring thought and an opinion which we might well desire to be true, but unfortunately it appears to have been unsupported in law. In the case of *Pearne v. Lisle*<sup>1</sup>, October 19, 1749, the plaintiff demanded a writ of *ne exeat regno* on the defendant, indebted to him for the hire of certain negroes. The Chancellor refused the writ, but in the course of his remarks he said: "I have no doubt but trover will lie for a negro slave; it is as much property as any other thing....The reason said at the Bar to have been given by Lord Chief Justice Holt<sup>2</sup> as the cause of his doubt, viz. that the moment a slave sets foot in England he becomes free, has no weight with it; nor can any reason be found why they should not be equally so, when they set foot in Jamaica, or any other English plantation. All our colonies are subject to the law of England, although as to some purposes they have laws of their own. There was once a doubt whether, if they were christened, they would not become free by that act, and there were precautions taken in the colonies to prevent their being baptised, till the opinion of Lord Talbot and myself, then Attorney and Solicitor General, was taken on that point. We were both of opinion that it did not at all alter their state. There were formerly villeins or slaves in England, and those of two sorts, regardant and in gross; and although tenures are taken away, there are no laws that have destroyed servitude absolutely. Trover might have been brought for a villein. If a man was to come into a court of record and confess himself villein to another (which is one way of being a villein), what the consequences would be, I will not say, but there is no law to abolish it at this time."

The opinion here alluded to, and given by himself and Talbot on January 14, 1729, and which, coming from such high authority, was held as the established law of the land and gave countenance to various un-English and inhuman proceedings, such as the advertisement for escaped slaves and even for sales, and their

<sup>1</sup> Ambler, 75.

<sup>2</sup> In a case reported in Salkeld, 666.

seizure in the public streets<sup>1</sup>, ran as follows: "We are of opinion that a slave by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property or right in him is not thereby determined or varied, and [that] baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion that the master may legally compel him to return to the plantations<sup>2</sup>."

At first sight and as it stands, Lord Hardwicke's *dictum* in this case is disappointing. It might have been expected that such a question, involving so distinctly considerations of equity as against the rigidity of the law, would have been discussed by him on a somewhat higher plane. Following his own methods in so many other cases, he would have found little difficulty, it would appear, in showing, for instance, that the analogy drawn from the different forms of villeinage, once existing in England, was scarcely full enough to justify in equity the enslavement of whole races, their separation from the soil, and their liability to be bought and sold in the free market and transhipped abroad, or he might possibly have demonstrated the incompatibility of the institution of slavery with the tenets of Christianity which, in the case quoted last, he had declared to be part of the law of England. But the signification of his observations must not be misunderstood or exaggerated. He merely interprets, and no doubt accurately, the common law on this occasion, as he had on the former one, without expressing any opinion as to its justice, or whether it might form a ground of relief in equity. The question was one of great difficulty, involving important interests; and the practice of over-stepping the case before the Court, and launching out into speculative opinions upon points not under review, was one contrary to the traditions of English courts of justice, and especially deprecated and avoided by Lord Hardwicke. Had the whole matter come before him in the form of an appeal for equity against the rigidity of the common law, and been exhaustively argued by Counsel on both sides, he might possibly have taken a wider view, and one more consistent with justice and with the general spirit of English laws and the constitution.

<sup>1</sup> Clarkson, *History of the Abolition of the Slave Trade*, pp. 65-68; and *A Representation of the Injustice and Dangerous Tendency, &c.*, 1769, by Granville Sharp, an attempt to combat the above opinion; also H. 248, f. 155; Bancroft, *Hist. of the United States*, 1876, ii. 553, 557.

<sup>2</sup> *State Trials*, xx. 4.

The question came before the courts for the first time in the famous case of *Sommerset v. Stewart*, 1771-2, before Lord Mansfield<sup>1</sup>, when the Chief Justice gave judgment contrary to the opinions here laid down, "by two of the greatest men of their own or any times," and ordered the plaintiff, who had accompanied his master to England, to be liberated from his service. On the other hand, these opinions were again followed afterwards by Lord Stowell in his judgment *re Grace*, 1827<sup>2</sup>.

*Sir John Robinson v. Cumming*<sup>3</sup>, October 16, 1742, was the hard case of a gentleman, who had expended £120 upon a lady in presents, who afterwards deceived him. The Chancellor refused to order any repayment of the value of the gifts here on the ground that the gentleman, having only £100 a year and the lady a great fortune, he must be looked upon as an adventurer with very little prospect of success and who, "like all other adventurers, if he will run risks, and loses by the attempt, he must take it for his pains."

In *Selwyn v. Honeywood*<sup>4</sup>, October 20, 1743, he gave relief against a bond to pay £800 a year out of the profits of a public office, on the ground that such an obligation was against the general good, and the general policy of the realm, and contrary to several statutes. In the same way, in *Gilbert v. Chudleigh*<sup>5</sup>, July 18, 1748, he cancelled a bond of £420, given as a *douceur* to procure a recommendation to a military appointment, and referred to *Walmesley v. Booth*<sup>6</sup>, in which case, on the rehearing, he had reversed his own decree for fear of establishing such contracts and of discouraging persons from seeking redress, and added: "My judgment was convinced by the consequence of the thing, and the general policy and principles which had governed such cases."

Generally speaking, the powers wielded by the Chancellor were sufficient to compel obedience to his decrees. Sometimes, however, the party tried to evade or resist his jurisdiction. In the case of *Richardson*<sup>7</sup>, a bankrupt, Lord Hardwicke had decided that his place of Under Marshal was saleable under a commission of bankruptcy, provided that the Lord Mayor and Corporation would give their consent; otherwise, a bankrupt in the last extremity would only have to invest his money in a similar place to bar all claims of his creditors. The Corporation, however, considered themselves

<sup>1</sup> *State Trials*, xx. 1 sqq.; Broom's *Const. Law* (Denman), 59.

<sup>2</sup> Ambler, 76 n.

<sup>3</sup> 2 Atk. 408.

<sup>4</sup> H. 671, f. 165 b.

<sup>5</sup> H. 670, f. 27.

<sup>6</sup> See below, p. 479.

<sup>7</sup> *Ex parte Butler*, 1 Atk. 210; Ambler, 73.

unable to confiscate the place, unless the bankrupt gave his consent, which he naturally refused. Thereupon the Chancellor "expressed himself with some warmth," that if the bankrupt should refuse to attend and resign the post, he should stand committed till he conformed. The bankrupt, however, kept prudently out of the way. But by so doing, he made himself liable to dismissal through absence and non-fulfilment of his duties, and thus he was made to feel the Chancellor's long arm.

In another case, one Wardlow<sup>1</sup>, against whom the Chancellor had issued a warrant for marrying a ward of the Court, avoided service by remaining in the Marshalsea, over which the Chancellor had no jurisdiction. Lord Hardwicke, however, compelled him to appear before him by a writ of *habeas corpus*. Occasionally, however, the Chancellor's power was successfully defied, as in the case of Savile of Medley, mentioned by Lord Hardwicke himself, "who when tenant in tail, chose rather to live in gaol and be served in plate there, than perform his agreement<sup>2</sup>."

In the exercise of his jurisdiction in controlling that of the co-existing courts, Lord Hardwicke showed great caution. In issuing injunctions and prohibitions, he always explained carefully and exactly the ground of his action, limiting, it would appear, rather than extending, the action of the Court in this direction. Instances, however, occur frequently of injunctions issued against the tribunals of the common law, and they were an important part of the regular exercise of the Chancellor's equity jurisdiction, and need no illustration. The procedure and jurisdiction of the spiritual courts also, a survival from an earlier and different stage of society, had often to be controlled to prevent miscarriages of justice.

In *Hill v. Turner*<sup>3</sup>, December 20, 1737, for instance, already quoted, an infant had been made drunk and inveigled into a low marriage at the Fleet. Subsequently, the wife had been committed to the Fleet, and the infant sent out of the country by his mother and apprenticed to a merchant in Holland. The wife thereupon instituted a suit in the ecclesiastical court for alimony and restoration of conjugal rights, in which she was successful, the court finally issuing a sentence of excommunication against both the mother and the husband. On the case coming up before him, Lord

<sup>1</sup> *Brandon v. Knight*, 1 Dickens, 160.

<sup>2</sup> *Hinton v. Hinton*, 2 Vesey, 634.

<sup>3</sup> 1 Atk. 515; West, 195; and above, p. 469; see also the case of Sir John Leigh, p. 60.

Hardwicke, after asserting strongly the propriety of applying to him for relief, and deploring the existence of such scandals, declined to reverse the sentence of the ecclesiastical court, which could only be done by appeal to the proper Judges<sup>1</sup>; nor could he grant a prohibition, as there was no reason to say that the court had exceeded its jurisdiction, but he could issue an injunction which, while admitting the jurisdiction, declared that it was being used contrary to equity and conscience. This was accordingly done, and the woman restrained from proceeding further in her suits in the ecclesiastical court, and from opposing a motion to absolve the plaintiff and his mother from the sentence of excommunication.

In the same way the Chancellor issued an injunction against the defendant in *Sheffield v. Duchess of Buckingham*<sup>2</sup>, October 9, 1739, from proceeding in the suit brought by her in the prerogative court of Canterbury.

In *Barnsley v. Powel*<sup>3</sup>, July 18, 1749, he restrained a party, who had obtained a decree from the Court of Exchequer, that a will, respecting a real estate, was well proved, from profiting by it, on account of forgery; and directed the parties to consent to a revocation of probate in the ecclesiastical court. If they refused, he declared, the administration would be granted to the plaintiff.

In the case of *Stace v. Mabbot*<sup>4</sup>, July 20, 1754, he granted a new trial, though the Judge in the former proceedings had certified in favour of the verdict, on the ground that there was new evidence and that the conscience of the Court was not satisfied.

Occasionally the question of the jurisdiction of foreign courts arose. In *Gage v. Bulkley*<sup>5</sup>, March 23, 1745, he refused to establish the precedent that a judgment or sentence of a foreign court was pleadable in an English court of justice, still less that of a summary court created by *arrêt* of the "French King" for political purposes, over-riding, and opposed by, the Parliament of Paris and therefore of doubtful jurisdiction. Some years later, however, July 27, 1754, when England was no longer at war with France, he pronounced a more favourable opinion of the French courts of "His Most Christian Majesty," declaring that a tribunal, established *de facto* and generally submitted to, should be taken for the lawful court of the country<sup>6</sup>.

<sup>1</sup> The Court of Delegates.

<sup>2</sup> 1 Atk. 628.

<sup>4</sup> 2 Vesey, 552.

<sup>6</sup> *Gage v. Stafford*, 2 Vesey, 557; and see below, p. 543.

<sup>3</sup> H. 834, f. 31 b; 1 Vesey, 284.

<sup>5</sup> H. 669, f. 20; Ridgeway, 263.

In *Duhamel v. Ardouin*<sup>1</sup>, February 11, 1751, we find him interpreting a French will.

Such was the character and scope of this extraordinary jurisdiction, under which at one moment the frontiers of whole colonies might be established and at another petty family affairs settled, which extended throughout the empire and yet was felt in every home, and the whole of which was centred in and exercised by one individual, who alone wielded powers over the persons and property of all British subjects, long denied to the Sovereign himself.

This mighty instrument was controlled to some extent at least by the appeal to the House of Lords, which had existed since the time of Charles II. But it so happened that during the whole of Lord Hardwicke's Chancellorship, this restraint upon the Chancellor's powers was practically absent. At the death of Lord Talbot, Lord Hardwicke was the only law Lord in the Upper House, and he remained so for twenty years, till he retired from the Woolsack in 1756, and Murray, as Lord Mansfield, received his peerage. The Chancellor's enemies averred that he had purposely maintained this sole supremacy from ambitious motives and a desire for predominance<sup>2</sup>, but other circumstances are more naturally accepted as the true reasons. These were chiefly the early death of Lord Talbot, the disappearance from the scene of all the earlier Chancellors and the long duration of Lord Hardwicke's own Chancellorship, whereby no creation of new Chancellors took place for twenty-three years. Titles were bestowed with a very careful and even grudging hand by George II, far less lavishly than at the present day or even in the next reign, and it was by no means a matter of course that the Chief Justices should obtain peerages. Some little colour was given to the accusation by the elevation of both Ryder and Murray to the peerage at the exact moment of Lord Hardwicke's retirement; but these promotions are to be ascribed to the general rearrangement of places and the satisfaction of claims, consequent on the fall of the ministry. Sir Dudley Ryder had only been raised to the Bench two years before. Lord Mansfield, indeed, did not obtain his peerage without a struggle, and a final threat to retire altogether from the service of the party; but the opposition to his advancement in rank did not

<sup>1</sup> 2 Vesey, 163.

<sup>2</sup> H. Walpole, above, p. 276 n.; also the anonymous correspondent of R. Cooksey, whose mendacious nonsense is all copied, as if gospel truth, by Parkes in his *Hist. of the Court of Chancery*, p. 324, who adds the most extraordinary reason of all for discrediting Lord Hardwicke, viz. that he lived in the times of Bubb Dodington, p. 319.

come from Lord Hardwicke but from the Duke of Newcastle, who was naturally anxious to retain Murray's services in the House of Commons, where the government greatly wanted ability and support, and where Murray's masterly and impressive logic had often been more than a match for Pitt's thunders and tirades<sup>1</sup>.

This sole judicial authority in the House of Lords added greatly to the Chancellor's power and responsibilities. By this time the peers had left the management of their judicial business almost entirely to the law Lords and generally merely gave their votes according to their advice, though it was not till 1823, when a regulation was made compelling the attendance of three peers at appeals, that their participation in the proceedings was shown to be altogether formal. Lord Hardwicke was not only Chancellor and administrator of equity, but sole Judge in the supreme tribunal which decided appeals from all the courts, both equity and common law, in Great Britain and Ireland. These appeals included those from his own decrees in Chancery; but during the long period of his tenure of the Great Seal, not one of his decrees was ever reversed by the House of Lords, while only three in his life-time were ever appealed from, and these were all affirmed. They were, *Chetwynd v. Fleetwood and others*<sup>2</sup>, 1742, partly decided by Lord Talbot, *Le Neve and others v. Norris and others*<sup>3</sup>, 16 April, 1744, and *Rotheram v. Brown and others*<sup>4</sup>, 1748. In another case, that of *Wilson and others v. Kirshaw and others*<sup>5</sup>, 1751, the appellants on the day appointed, "declined giving their Lordships the trouble of hearing it," and in *Gibson v. Lord Montfort*<sup>6</sup>, re-heard May 22, 1767, some years after his death, his decree was also affirmed.

No doubt the significance of this is somewhat altered by the fact that appeal could only lie from Lord Hardwicke, Chancellor,

<sup>1</sup> See p. 276. It may be, perhaps, thought necessary to mention the three other Judges who alone could have had such claims. Sir Thos. Parker was one of Lord H.'s oldest friends, having been his fellow pupil at Salkeld's, and received steady support from the Chancellor throughout his career. After several steps in promotion, he had been made Chief Baron of the Exchequer in 1742, where he remained in spite of Lord H.'s efforts to secure his promotion to the Chief Justiceship of the Common Pleas, till his resignation in 1772. Sir William Lee, Lord Chief Justice till 1754, was also a personal friend of Lord H.'s, who had long refused the honour of Knighthood and did not aspire to a peerage. Sir John Willes had a better claim, considering his ability and long services. But he was an unscrupulous political intriguer, an adherent of Frederick Prince of Wales, much disliked by the King, and who was refused a peerage in 1757.

<sup>2</sup> Brown, *Reports of Cases in Parliament*, iv. 444.

<sup>3</sup> *Ib.* iv. 465; *Walpoliana* (1783), 16.

<sup>4</sup> Brown, *Reports of Cases in Parliament*, iv. 583.

<sup>5</sup> *Ib.* v. 1.

<sup>6</sup> Otherwise cited as *Rogers v. Gibson and Shephard v. Lord Montfort*; 1 Vesey, 485; see MS note of Hargrave in his copy in Brit. Mus.



to Lord Hardwicke, Peer. But it is going too far to say, with some writers, that this was the primary cause of the fewness of appeals and of their dismissal without exception. It must be remembered that appeals in the Lords were attended generally by the Judges who, though they had no actual share in pronouncing judgment, yet gave their opinions publicly and freely, and by their consideration of the case ventilated it anew and gave it a new trial. A contrary opinion expressed strongly and unanimously by them might, even at that date, have been followed by the Lords in the case of a weak Chancellor. But there are no instances of any similar disagreement in Lord Hardwicke's time.

It is lowering things to too mean a level to suppose that any of the great Chancellors would have deliberately brought about a failure of justice, in order to preserve for themselves a reputation for infallibility. Nor could such a reputation be secured by such methods; for the character of an English judge rested on public judicial proceedings and depended on a learned and critical professional opinion. The same accusation was made against Lord Chancellor Eldon on equally baseless foundations, and may at once be dismissed.

The true reason, or at least a principal one, of the fewness of appeals, was certainly the practice of re-hearing cases by the Chancellor himself. It appears that such re-hearings were not so strictly limited, as were appeals to the House of Lords, in which no new matter could be introduced but only the same facts offered, that had already been the subject of proceedings in Chancery<sup>1</sup>. Re-hearings in Chancery were also doubtless much cheaper and more expeditious. Generally speaking, about half a dozen re-hearings were decided by Lord Hardwicke during the year; and in two of these it is recorded that he reversed his own decrees. In *Walmesley v. Booth*<sup>2</sup>, June 29, 1739, he had refused to grant relief against the bond in question; but on the case coming up before him again, May 2, 1741, he said: "Upon this case being re-argued and re-considered, I am thoroughly convinced that my former decree was wrong," and then reversed it<sup>3</sup>. In the same way, in *Gorton v. Hancock*<sup>4</sup>, after the case had been argued again more fully by Counsel, he set aside his former decree, saying: "Not to confess an error is much worse than to err<sup>5</sup>." In other instances,

<sup>1</sup> Ambler, 89.

<sup>2</sup> See above, p. 474, for the reason of this first decree.

<sup>3</sup> 2 Atk. 27.

<sup>4</sup> See pp. 424, 498.

<sup>5</sup> Hargrave MSS, 383, f. 122; but Hargrave writes in his copy of 2 Atkyns, 439, in Brit.

after carefully reconsidering them afresh, he maintained his former opinions<sup>1</sup>.

Another cause was, without any doubt, the exceptional clearness and perspicacity with which he delivered his decrees, as well as the well-marked general principle which always formed their foundation, and the conviction, which his exhaustive examination of the case in all its bearings and with all its arguments brought to the minds of every person in his Court. His great reputation, extending far beyond the Bar, to the general public, and based not only on his legal learning but on his well-known uprightness, thoroughness and scrupulous fairness, and the personal feelings of respect and confidence which he inspired, were again largely instrumental in rendering his decrees decisive and final, and in terminating litigation. Even in cases in which he was not perfectly satisfied with his own opinion, yet when the parties were assured that it had been formed after exhaustive study and consideration, they were content to accept the decree as a final settlement. In *Rigden v. Vallier*<sup>2</sup>, March 25, 1750, for instance, a case which turned upon the interpretation of the expression in a deed, "equally to be divided," he said: "I have considered this case as well as I could; but after I have delivered my opinion, if the parties are not satisfied, I will put it into some other method of argument, considering the nature and nicety of the question and the variety of *dictums* in the Books." He proposed to send the case to the Lord Chief Baron and Mr Justice Burnet at their chambers to certify their opinions, and save the expense of going to the King's Bench. The Attorney General, however, Counsel for the defendant, declaring himself satisfied with the Chancellor's argument, the decree was pronounced accordingly without further proceedings.

"Certainty" and "Repose" and Finality in the law were secured to an extent which had never been attained before, and no other Chancellor can boast of such a record. Several of Lord Talbot's decrees, during his brief Chancellorship, were over-ruled,

Mus.: "I have heard Mr Serjeant Hill say that, in the opinion of very respectable practisers at the bar, Lord Hardwicke's first decree was the right one." Cf. Lord Eldon: "Lord Chancellors were not ashamed to retract their opinions, when they had reason to believe that these opinions were formed upon erroneous grounds." *Parl. Debates*, N.S. ix. 1323.

<sup>1</sup> *E.g. Hervey v. Hervey* (H. 667, f. 108 b; 1 Atk. 564; Barnardiston, 103-116); *Lowther v. Condon* (H. 667, f. 139; 2 Atk. 130); and *Lloyd v. Spillet* (Barnardiston, 384). In *Hearne v. Hearne*, April 1741 (*ib.* 434), the Attorney General obtained a new hearing, on the ground of a new precedent, discovered since the first trial, but the Chancellor quoted a contrary decree by the same Judge and confirmed his own.

<sup>2</sup> H. 663, f. 112; 3 Atk. 731.

as were Lord King's before him; while Lord Hardwicke himself assisted in revising many of those of his successor, Lord Henley<sup>1</sup>. Lord Eldon approaches nearest, who, in his long tenure of office, had only one decree over-ruled; but a much larger number of his decrees were appealed against and a much smaller number were annually decided by him<sup>2</sup>. The significance of this finality in Lord Hardwicke's decrees is very great; and although full force must be allowed for the peculiar conditions attending his tenure of the Great Seal, and the exceptional independence of his jurisdiction, yet we may still repeat the praises of his contemporaries, Lord Chesterfield and the President Montesquieu, and apply them in a deeper and more extended sense:—"He presided in the Court of Chancery above 20 years; and in all that time none of his decrees were reversed, nor the justness of them ever questioned<sup>3</sup>." "*C'est un éloge audessus de toute la flatterie*<sup>4</sup>."

The fact that he was the only peer on the bench gave him also exceptional judicial influence and authority in the Privy Council, to which tribunal came cases from every part of the empire.

This extraordinary jurisdiction and responsibility, exercised for so many years, were not misplaced or misemployed. The reports of cases decided by the two supreme tribunals at this period are exceedingly scanty, but all competent authorities seem to agree that the business of appeals was never so well conducted as in Lord Hardwicke's time, when the causes were decided by himself alone. One of the greatest difficulties, attending the appeal jurisdiction of the House of Lords, had always been the decision of cases from Scotland, where the Roman civil law and an ancient feudal system of land tenure, differing greatly from our own, obtained. The English Judges were commonly very little versed in Roman law, and not at all in Scottish<sup>5</sup>; and extremely intricate problems were often presented, beyond their competence to solve, when Scottish customs and legal rights came to be decided upon the analogy of English law and equity. The Treaty of Union between the two countries after which the Parliament in London legislated for Scotland, and the final overthrow of the Jacobite plans and the new

<sup>1</sup> *Devonshire v. Wall*, Brown, *Reports of Cases in Parliament*, v. 379, and *passim*; and below, vol. iii. pp. 108, 390.

<sup>2</sup> See statistics below, p. 507.

<sup>3</sup> *Character of Lord H.*

<sup>4</sup> H. 5, f. 89.

<sup>5</sup> *E.g.* Lord Erskine's speech in House of Lords, June 30, 1833: "He might say that he knew something of the law, but of Scotch law he was as ignorant as a native of Mexico; and yet he was quite as learned in it as any one of their Lordships"; *Parl. Debates*, N.S. ix. 1322; also *ib.* xxv. 456.

developements in Scotland, raised several difficult questions which came finally before the Chancellor in the House of Lords, where they found a Judge capable, as no Chancellor had been before, through his knowledge of Roman law and of comparative jurisprudence, of understanding and of entering fully into the intricacies of these legal problems, and of discovering solutions which, while sometimes they interpreted Scottish law in a novel manner, did not encroach unduly on Scottish custom, and satisfied the Judges of that country.

The well-known case of *Gordon of Park*, April 1751, was of this kind. The question involved was the effect of attainder for treason on the descent of entailed estates in Scotland, Sir William Gordon, who had inherited the property, having been engaged in the Jacobite Rebellion and being then a fugitive abroad. Since the Union, the English treason laws had been introduced into Scotland, and the Scottish law, according to which attainder for treason did not affect entails, was thereby suspended. It was held by the Scottish Judges that the estate, after the death of Sir William, devolved upon his next brother, James, and was forfeited to the Crown only during the former's life; but an appeal being made to the Lords, Lord Hardwicke, after calling in the assistance of the English Judges, advised that the barony of Park should be declared forfeited to the Crown during the existence of Sir William and his issue male, and that only on failure of these could James Gordon, as remainder-man, have the right to succeed<sup>1</sup>.

A great difficulty in settling this case arose from the divergence of the English and the Scottish law on the following point. According to the former, forfeiture operated only against the offender and his heirs and not against remainder-men, who were technically considered as not heirs; while, according to the Scottish law, "every person called to the succession" was an heir, and the result of the Act of 7 Anne was therefore much more far-reaching in Scotland than in England. It is not necessary in this place to go into all the difficulties of this question. The Chancellor's judgment was greatly influenced by the general object of the Act of Union, and the statement in the preamble, which ran:—"That nothing can more conduce to the improving the union of the two kingdoms,

<sup>1</sup> Sir M. Foster, *Report of some Proceedings, &c.*, 95 sqq. This appears to be the only report of the case, but in quoting it one is treading on forbidden ground, for it is one of those to the insertion of which the Chancellor objected. (See above, p. 434.) Lord Kames, *Elucidations*, 364 sqq.; below, pp. 541 sqq.; Sandford, *Treatise on the Hist. of Entails*, 176.

...than that the laws of both parts of Great Britain should agree as near as may be, especially those laws which relate to high treason." The problem was solved therefore by introducing into the law of Scotland the English institution of remainder-men in cases of forfeiture; and by this means the effect of the law in the former country was assimilated to that obtaining here.

Lord Kames, a great authority on Scottish law of the period, remarks on this decision as follows: "By this judgment a *remainder* with respect to forfeiture is introduced into our law, hitherto unknown in Scotland. We must not, however, imagine that this judgment proceeded from ignorance of the law of Scotland. The innovation was necessary, in order to make a perfect equality between the two nations with respect to the punishment of treason<sup>1</sup>."

This slight sketch of Lord Hardwicke's jurisdiction must now be brought to a close. Imperfect and superficial as such appreciation must be, it may still suffice to give some conception of the ideals which inspired his decrees, and of the great principles on which they were established. We shall now proceed to endeavour to form some idea of the mental process and of the kind of intellect, which were brought to bear upon the problem of equity administration, as well as of the personal characteristics, which made Lord Hardwicke's Chancellorship so renowned and memorable.

#### IV

No lawyer ever rose to the Woolsack with so vast and complete a knowledge of the law in all its branches. He had passed in succession through all its different stages. Beginning life as the son of a country solicitor, he had afterwards as a pupil been placed in the office of an attorney in large practice in London, and had there become acquainted with the actual working of the law in its lower branches. He had then entered the Bar and studied deeply and widely, as his legal manuscript collections testify, and with

<sup>1</sup> *Elucidations*, 371. Lord Campbell's observations (*Lives of the Chancellors*, v. 61-2) on this case are very characteristic. He first puts into the mouth of the Chancellor a speech purely fictitious, and then says: "Lord Kames highly disapproved of this decision," quoting the *first sentence only* in the passage from Lord Kames in the text, and omitting all the rest. See also below, p. 541. To complete the fiction, he adds: "Lord H. had a sharp correspondence with him upon the subject." Other reports of Lord H.'s arguments in appeals in the H. of Lords will be found in Brown, *Reports of Cases in Parl.*, e.g. v. 179 n., *Bor v. Jacob Bor and others*, 1756, when he reversed the decree of the Lord Ch. of Ireland; H. 797, f. 271; and for P.C. Appeals, H. 868, ff. 98-9 and 108, and generally H. 868-872. See also for Prize Appeal Causes, H. 860-7.

a preoccupation and regularity that were broken by few distractions. He very soon obtained a large private practice, both in the equity and in the common law courts. He went on circuit, but was very soon recalled, after four years at the Bar, and at the early age of 29, to fill the important and responsible post of Solicitor-General. This position he retained for nearly four years; and for nine more he served the Crown as Attorney-General, adding thus to his earlier experience the conduct of state trials and the management of the legal business of the government. He had already been appointed Recorder of Dover, where a local court, having important and exceptional jurisdiction, existed. Next came the period of his Chief Justiceship, when he presided for three years over the highest court of common law, and finally the twenty years of his Chancellorship, followed by five years more of appeal work, completing more than half a century of assiduous and unceasing labour in all the various parts and branches of the law, thirty-six years of which had been spent in legal office without a single interruption.

During his long and busy official career he continued, as in earlier days, an earnest and indefatigable student of the law. He took regular and systematic notes of the cases, which he himself decided; and his most important, or intricate, decrees were all carefully prepared and written out beforehand.

A practical training such as this, so prolonged, extensive, and systematic, and so ripe an experience, added to very exceptional natural abilities and unfailing industry, gave to his opinions a weight, authority and finality, greater than those of any other Chancellor. "None but a lawyer," writes Le Marchant, the editor of Horace Walpole, "who has practised in the Court, where Lord Hardwicke so long presided, can correctly appreciate his discharge of the duties of that high office. His judgments retain their authority to the present hour, and furnish the earliest and clearest exposition of the principles of the equity jurisdiction of this country. And whoever may have had the opportunity of examining his Lordship's note books, will see the patient attention and indefatigable research that distinguished every part of his judicial career<sup>1</sup>." Lord Camden declared that, "One solemn determination by him was worth one hundred *dicta* of any other Judge<sup>2</sup>"; and Lord Eldon, referring to him as Judge, both at common law and in equity, spoke of him

<sup>1</sup> *Memoirs of George III* (1845), i. 386. See also preface to West's *Reports* in the same sense.

<sup>2</sup> Ridgeway, 277 n.

as one of the greatest of all who had ever sat in Westminster Hall<sup>1</sup>. He was "undoubtedly a very great lawyer," he said, "with reference to his knowledge both of common law and equity, perhaps much more eminent than the counsel of that day, great as they were, are in comparison with those of the present time; for it has frequently struck me, that the discussion at the Bar at that period was by no means equal to that of the present time<sup>2</sup>." "I am old enough to remember that great Judge," said Lord Kenyon on one occasion, "though but for a short time, before he left the Court of Chancery; and the knowledge of those who lived before me only fortified me in the opinion I formed of him, that his knowledge of the law was most extraordinary. He had been trained up very early in the pursuit, he had great industry and abilities, and was in short a consummate master of the profession<sup>3</sup>."

These eulogies have been echoed from the other side of the globe. "The present wise and rational system of English equity jurisprudence," said Chancellor Kent of the United States, "owes more to him than perhaps to any of his predecessors.... There is no Judge in the judicial annals of England, whose judicial character has received greater and more constant homage.... His decisions at this day, and in our own courts, do undoubtedly carry with them a more commanding weight of authority than those of any other Judge; and the best editions of [his reports] will continue to fix the attention and study of succeeding ages<sup>4</sup>."

It is worthy of special remark, however, that great as was this learning and knowledge of the law, it is never seen to overwhelm the judgment or turn to pedantry; and his decrees are exceptionally free from hair-splitting distinctions or displays of erudition. A very important ingredient in his legal training had been the study of Roman law and of the works of the Dutch jurists.

The exact measure of influence, which Roman law has exercised over the English, has been a question of some dispute among legal writers. It was always regarded with suspicion and dislike in England, and not without reason; for it was essentially a system invented and imposed by authority, in which the life of the individual was completely merged in the state, and the rights of the former, so

<sup>1</sup> 6 Vesey, jun., 813; see also Turner and Russell, 101; 5 Vesey, 500; 6 Vesey, 126; 7 Price, 277.

<sup>2</sup> Twiss, *Life of Eldon*, ii. 498; 10 Vesey, 342.

<sup>3</sup> 7 Durnford and East, 416.

<sup>4</sup> 1 Kent, *Commentaries*, 494. See also Mr Justice Story, *Commentaries on Equity Jurisprudence*, 35.

carefully safe-guarded by the English law, ignored. Its introduction into England was successfully resisted by the English Judges and the Parliament; and Glanville and Bracton, who had incorporated some of its doctrines into their works, were in consequence repudiated as authorities<sup>1</sup>; while the developement of English law continued to proceed on national, historical and experimental lines, as a positive practice, "a study of human life and action<sup>2</sup>," rather than as an exact science. English law remained as a whole untouched, and Roman law never obtained any authority over any people speaking the English language. We have here one of those great facts, the vast importance of which cannot be measured, but upon which it is no part of our task here to dwell<sup>3</sup>. The study of Roman law was discouraged in England; and in the 18th century Lord Hardwicke and Lord Mansfield appear to stand almost alone as its exponents on the Bench. It is doubtful whether the earlier ecclesiastical Chancellors introduced any definite rules, drawn from thence, into English equity. Those doctrines, at least, which fill the principal place in the administration of equity, such as those of trust and of specific performance, find no authority in Roman law. Roman law would have been inadequate to deal with the feudal tenures in England. But small portions of Roman law seem to have been adopted into equity at different times in a few particular cases, when the ecclesiastical courts had already admitted it and the Court of Chancery followed their practice, "that there might be an uniformity of judgments in the different courts<sup>4</sup>." This was especially the case with rules concerning wills, legacies and gifts *mortis causa*, originally under the sole jurisdiction of the ecclesiastical courts, and which can in this way be traced back to Roman law<sup>5</sup>. Thus in *Franco v. Alvares*, May 31, 1746, Lord Hardwicke said: "This Court has a concurrent jurisdiction with the ecclesiastical court in legacies, who determine according to the rule of the civil law. If I did not follow their rule, it has been truly said, there would be no uniformity in proceedings<sup>6</sup>." In *Evelyn v. Evelyn*<sup>7</sup>,

<sup>1</sup> Dillon, *Laws and Jurisprudence of England and America*, 23; Snell, *Principles of Equity*, 4 and 5.

<sup>2</sup> Sir F. Pollock, *Oxford Lectures*, p. 25.

<sup>3</sup> Dillon, 22, 25; Kerly, 100, 189; Pollock, *Oxford Lectures*, 46-8; but see Story, 15 and Maine, *Ancient Law*, 49, where a more direct influence is attributed to Roman Law.

<sup>4</sup> Lord H. in *Prowse v. Abingdon*, 1 Atk. 486; West, 317.

<sup>5</sup> Ram, 134 sqq. and decisions of Lord H. there cited; 1 Atk. 374-6; Kerly, 100-1, 189.

<sup>6</sup> 3 Atk. 346.

<sup>7</sup> H. 664, f. 128; 3 Atk. 762; Ambler, 191.



November 16, 1753, and January 14, 1754, a new case which was carefully considered by the Chancellor, and which involved the question, hitherto unsettled, whether a brother benefitted by a will before a grandfather, he said: "The civil law is no part of the law of England any further than it has been received here"; but, he added, it might be quoted usefully as an illustration and in some cases, as in the one before him, as explanatory of doubtful points, and almost as a principle, since the canon law had in earlier times an exclusive jurisdiction over the construction of wills, and the canon law was derived from the Roman civil law. In *Wallis v. Hodson*, January 22, 24, 1741, he declared that the statute of distributions was to be construed by the rules of the civil law, and directed the case to stand over till he had consulted the "Civilians" upon it<sup>1</sup>.

But it was not in these small positive and limited contributions to equity that the influence of Roman law chiefly consisted, but indirectly, as an educational force and intellectual discipline. The Roman law itself, in the same way, in its general conception, had owed something to Greek philosophy, but was little affected in its substance by Greek speculations. Neither equity nor the common law in England hitherto could claim to be considered as a philosophical system. The former had never existed as a complete system in itself but merely as a subsidiary one to the common law. Its origin had been the defects of the latter. Its development had followed closely the varying wants of the different periods. It was based upon vague general principles, which belonged to ethics rather than to jurisprudence. In its earlier stages, its decrees had been influenced by every kind of reason and motive according to the feelings, bias or learning of the particular Chancellor. In its later period, this licence had begun to give way to a respect for precedents, for concrete cases already decided on their merits, and within the limits of their special circumstances. The decisions of the English Chancellors had the same authoritative value as those of the text books of other nations; but they were single and disjointed judgments, applicable only to the particular cases and not connected by any general principle. Like the common law, equity was practical and not theoretical. It grew out of "real transactions actually litigated and recorded." Its foundation was experience and not speculation. As Sir Matthew Hale, the great common law Judge said, "Time and long experience are much more

<sup>1</sup> H. 671, f. 19; 2 Atkyns, 114.

ingenious, subtle and judicious than all the wisest and acutest wits, in the world co-existing, can be<sup>1</sup>." "With us, in England," the Chancellor wrote to Duncan Forbes, the President of the Court of Session in Scotland, "particular opinions of lawyers, delivered in treatises of law, are considered as of far less weight than judicial decisions<sup>2</sup>."

When Charles Yorke visited the celebrated and venerable French Chancellor D'Aguesseau at Paris, the latter enquired for works written on the jurisdiction of the English courts of justice. He was unable to name any, and could only reply that in England the Judges and lawyers were too busy making law to find time for speculating upon it<sup>3</sup>.

No doubt, as in the case of the common law, the practical character of English equity had great advantages. It was not an artificial system imposed officially from without, but it had sprung up naturally and spontaneously. A system imported from abroad, however superior in philosophical conception and symmetry, would not have been in the same way so thoroughly trusted and obeyed. English law was free from any tinge of arbitrary tyranny or foreign influence, and was thoroughly impregnated with the spirit of the English political constitution, and with broad ideas of individual rights and freedom.

"A land of settled government,  
A land of just and old renown,  
Where freedom broadens slowly down,  
From precedent to precedent."

These great benefits, however, and they can hardly be exaggerated, were, as in the case of various other constitutional liberties which the people of England enjoyed, weighted with grave disadvantages. English law remained a collection of single cases, uncodified, undigested, and unconnected, in which the whole authority for deciding future causes was supposed to rest, supplemented in equity by appeals to "natural law" and vague abstract justice equally unsystematic and unscientific.

<sup>1</sup> 'Amendment and Alteration of Laws,' in Hargrave's *Collection of Law Tracts*, i. 254.

<sup>2</sup> *Culloden Papers*, 159.

<sup>3</sup> Above, p. 170; cf. also Butler's *Reminiscences*, i. 46: "Whoever reads either our books of reports or our legal publications, must observe the countless citations in them of adjudged cases, and the great paucity of references to legal publications. On the other hand, adjudged cases are very seldom cited in foreign books of reports, or in foreign legal publications." He adds: "This is a curious circumstance: the Reminiscent has frequently remarked it to foreign lawyers of the greatest eminence, but never heard it satisfactorily accounted for."

"...The lawless science of our law,  
That codeless myriad of precedent,  
That wilderness of single instances,  
Thro' which a few, by wit or fortune led,  
May beat a pathway out to wealth and fame."

As time went on and the business of the courts increased, the collections of cases mounted higher and higher. The law was rapidly becoming unintelligible and approaching a state of chaos; and the whole legal system was in danger of falling by its own mere weight, and its lack of cohesion.

To one groping in the obscurities and solitudes of English law a flood of light was poured in from the source of Roman jurisprudence. It added the element of *a priori* to a *posteriori* reasoning, without which no logic can be complete. Its general conception was exactly the reverse of the English. It was founded on abstract principles, drawn probably from the highest source, the Greek philosophers, and was absolutely symmetrical, consistent and harmonious<sup>1</sup>. No authority was attributed to concrete cases; and the pronouncements of the Praetor were general rules, expressing some common principle, of which the imaginary cases cited were not precedents but only illustrations. Instead of the "myriads of single instances," it contained only a few fundamental conceptions, worked out further into subordinate details. It possessed a wonderful power of applying general principles to concrete cases, and of enunciating a legal proposition with clearness and precision. Its review of jurisprudence was wide and philosophical.

Now these are exactly the characteristics which are so prominent and striking in Lord Hardwicke's decrees. They were the outcome of his great power of generalisation, doubtless in part a natural intellectual gift, but almost certainly developed as well by his studies in Roman law and wide reading. As the man of science at last, after infinite perseverance in the investigation of detached facts, discovers some far-reaching natural law, which instantly explains and connects a multitude of phenomena, hitherto isolated and meaningless; or as the metaphysician, from a series of conceptions, apparently barren and contradictory, evolves some grand inspiring truth which can form a foundation for the whole intellectual life; so this great Judge brought to bear his generalising and creative power on the vast and inanimate bulk, on the disconnected and confused collection of recorded incidents, which

<sup>1</sup> Maine, *Cambridge Essays*, "Law and Legal Education," 1 sqq.

made up English equity; educed from each an abstract notion, and from these again drew some rule or fundamental principle, at once covering all former precedents, superseding them, and providing a new foundation on which subsequent decisions might be based. A spirit entered, as if by a miracle, into a body, lifeless before and incapable of developement, growth or progress. The dry bones, as if by a magic touch, sprang together, and took upon them the likeness and the nature of a living form.

It is curious and instructive to observe the gradual process and movement by which life was created from the inanimate material, and order evolved out of chaos; and to observe how the countless details, like the elemental material of the universe, compelled by the power of mind and by the vivifying influence of ideas and imagination, are made to circle round and attach themselves to some great principle, and thence, drawing new impetus and mobility, become connected, form themselves into active bodies, and continue gradually and unceasingly to attract to themselves further matter in the separate spheres of the legal firmament.

It was a great creative work which was accomplished, the whole of equity law being transformed and given a new life. By the close of Lord Hardwicke's career equity jurisprudence had become a philosophical system, capable of infinite expansion. As a school of philosophical and logical training, it had attracted many disciples of the greatest intellectual abilities. It was the golden age of equity, in which equity attained its highest developement and possessed its greatest exponent. Its triumphs were unconscious ones and gained in that period in its history, when the higher intellectual powers, those of imagination and of philosophical speculation, had greatest influence. As so often happens, it was followed by a period of criticism, in which further production or creation ceased. In later years, equity became conscious of itself, fearful of advancing and inclined to rely entirely on the authority and examples of the age before. It ceased to be a philosophy, inspired by great principles and capable of continual growth and developement, and sank into an exact and technical science, almost as limited and defined as the common law. The later history of equity has little to attract the general reader. Lord Hardwicke's successors, while interpreting and enlarging the application of the doctrines laid down by him, did not inherit his wide philosophical methods. Lord Eldon, for instance, "instead of enlarging the jurisdiction of his Court by indirect legislation, devoted himself

through life to explaining and harmonising it<sup>1</sup>." But in spite of his great labours, which fill 32 volumes, and the "care with which he considered his decrees," much of his work was wasted, because "the guiding principles of his judgments were not so clearly enunciated, and not in as general terms, as those of Lord Hardwicke<sup>2</sup>." The treatises of Lord St Leonards again, one of the most able and learned of the Judges in the next generation, are said to be mere accumulations of details, "unilluminated and unrelieved by any statement of general principles."

The great importance which must be attached to Lord Hardwicke's philosophical treatment of law must not, however, lead us to disparage unduly the labours of others on different planes, and with different methods. The regeneration of the law, which took place under his guidance, was accomplished in the course and in the full tide of natural development. All the necessary conditions for such a transformation then existed. As so often happens, the great man appeared exactly at the moment that he was needed. Had Lord Hardwicke lived earlier, it would probably not have been effected. The business of the court was then too scanty and miscellaneous to form material for the generalisations that were possible later, and the Chancellors were too much involved in political affairs to give the necessary time and attention to their legal duties. Had he on the other hand come later, a vast number of precedents and decisions, unchangeable, because of the enormous interests which depended upon them, would have been already established, and he would thus have been hindered to a great extent from initiating alterations or new developments.

Nor, of course, can it be claimed that Lord Hardwicke was the first or only Judge to generalise from concrete cases and lay down equitable principles. Many such principles will be found to have originated before his time<sup>3</sup>, and many were evolved later. Without such generalisation, or the reduction of a case to its abstract principle, no opinion obviously could be reached by the intellect. It was very seldom, probably never, that a case occurred, identical in all its details, with another; all that could be expected was that

<sup>1</sup> Maine, *Ancient Law* (1906), 70.

<sup>2</sup> Kerly, 182; Lord Campbell, *Lives of the Chancellors*, vii. 619, notices as one of Eldon's defects, his total ignorance and neglect of Roman law and all foreign codes, and attributes Lord H.'s brilliant career chiefly to his familiarity with this branch of legal knowledge. This lack of generalisation in Lord Eldon is noticed by Twiss, *Life of Lord Eldon*, ii. 461 sqq.

<sup>3</sup> Especially by Lord Nottingham in his *Prolegomena*.

they should be analogous, that the facts and circumstances should be so far similar in both that they might be both reduced to the same principle. This intellectual process was gone through by the Judge every time a precedent was cited, and without it he could not have arrived at any logical conclusion. But equity seems to owe to Lord Hardwicke that he carried the process of generalisation and abstraction much farther and much higher. Speaking as a whole, generalisation had been an unconscious mental act of the Judge, who when once his mind was made up, made no further use of the principle evolved. The problem solved was essentially a special and a concrete one; and the case according to which, as a precedent, it had been decided, remained as before the authority for future decisions.

But with Lord Hardwicke this generalisation was the keynote and inspiration of his whole method. It was now given far greater prominence. It was carried on in open court, as a necessary part of the argument. The conclusion reached was not only the practical one, that certain precedents covered the case under review, nor again merely that these precedents together yielded a certain principle. This principle was now made the authority and the new basis for all future decisions, and it superseded the series of precedents and former decisions which became, as in the Proctor's edicts, mere illustrations of it. In *Ryall v. Rowles*, for instance<sup>1</sup>, after the Judges had exhausted the authorities and given their opinions, in which he concurred, he carried the argument a step farther, saying as "this was a case of great expectation and consequence, he would reduce the grounds to some general principle." "We must remember," he said on another occasion, "neither law nor equity consists merely of cases and precedents, but of general rules and principles by the reason of which, the several cases, coming before the courts of justice, are to be governed<sup>2</sup>."

In this way gradually, during his long Chancellorship of twenty years, equity became transformed from a collection of disconnected cases and precedents into a scientific and harmonious legal system, based on the clearest and widest philosophical principles. The change, moreover, was carried out with the preservation of all that already existed. There was no breach with the past, or with

<sup>1</sup> Above, p. 463.

<sup>2</sup> In *Gorton v. Hancock*, Hargrave MSS, 383, f. 122; see below, p. 498, and above, pp. 424, 479; cf. Lord Mansfield in *Rex v. Bambridge*, 3 Douglas, 332, "The law does not consist of particular cases but of general principles, which are illustrated and explained by these cases."

tradition. The full force of precedent and established rule was always allowed. There was no tendency towards the irresponsible fancies of an inexperienced theorist, or to deciding in advance abstract principles, not involved in the case before him. Speaking once of Lord Chancellor Harcourt, he said: "After this noble Lord was out of his office, I have more than once heard him express himself very strongly and very wisely against declaring general reasonings in decrees of this Court, which may possibly affect other cases, not then in judgment, and which consequently could not have been fully considered nor foreseen. I could have wished that his Lordship had not departed from that cautious rule in this instance<sup>1</sup>."

His feet were firmly fixed upon the solid foundations of learning and practice. At the same time, the higher ideal was never lost sight of; and the hope was always present of obtaining the complete identity of law with natural justice. Lord Hardwicke has been criticised for keeping his flight too low, of proceeding too cautiously, of embarrassing himself too much with details<sup>2</sup>; and, on the other hand, of being inclined to "base his judgments exclusively on the foundation of pure reason<sup>3</sup>." "Some, but faintly," says Charles Butler<sup>4</sup>, "blamed him for too frequently permitting principles of equity to control rules of law: this charge was occasionally insinuated by Lord Northington, his immediate successor."

It is obvious that these criticisms are mutually destructive, nor are they in the least justified by the reports of his decrees<sup>5</sup>, or supported by the opinion of his contemporaries. Andrew Stuart, a

<sup>1</sup> In *Bagshaw v. Spencer*, H. 670, f. 78.

<sup>2</sup> Ram, 259; but the cases cited do not bear out this criticism in any way. *Nugent v. Gifford* (West, 494). Here the Chancellor dwells upon particular circumstances, in order to embrace the whole case and to distinguish it from two others cited by the Counsel for the defendant, with the object of explaining the grounds of his decree for the plaintiff. *Mead v. Orrery* (3 Atk. 255) upon which Sir Wm. Grant says: "Lord H., instead of stating shortly and generally that an executor has the absolute right to dispose, as he pleases, of the testator's property, enters into all the circumstances to show that in that case the assignment ought to stand." Here there has been a singular misapprehension of Sir Wm. Grant's remarks, of which the point is not the timidity of Lord H.'s decree but its valid reasons, on which he proceeds to base his own. As for *Snee v. Prescott* (1 Atk. 245), and Mr J. Buller's remarks on this case (2 Durnford and East, 73) an important principle appears, according to the note, to have been established here.

<sup>3</sup> *Law Mag.* (1830), iii. 95.

<sup>4</sup> *Reminiscences*, i. 132.

<sup>5</sup> The truth of these criticisms is contradicted over and over again by the reports of his decrees; but his extreme care in commercial cases, not to decide them, although new ones, on principles of absolute equity, but according to the custom of the trade, may be especially noted. See *Kruger v. Wilcox* (Ambler, 253; 1 Dickens, 269), where he called the city merchants into court.

good authority, on the contrary, when drawing a comparison unfavourable to Lord Mansfield, whose supposed excessive inclination to equity was the subject of his criticism, distinctly says that in Lord Hardwicke's time, "it was not a difficult matter for men of knowledge and experience to foretell what decision would be given on particular cases; because they knew that these Judges, revering the laws of their country, endeavoured to make jurisprudence a science founded on solid and fixed principles: they studied uniformity in their decisions, preferring it to the vain admiration attending the appearances of superior genius or the applause of individuals, who might profit by the deviations from established principles<sup>1</sup>." According also to Daines Barrington, "Nearly twenty years of well-considered decrees, made by the same most consummate lawyer without reversal, have now established so clear, consistent and beneficial a system of equity, that ignorance only can reproach it with being *jus vagum aut incognitum*<sup>2</sup>."

In truth, both "pure reason" and details were equally essential ingredients in Lord Hardwicke's judgments as in all logic; and there can hardly be found finer examples of *a priori* and *a posteriori* argument than some of his decrees, the principle, which it was desired to establish, connecting and illuminating the several cases, but the latter being given their full significance and importance, never being overwhelmed, or whittled away, by fanciful or forced interpretations, or word-quibbles. An exact statement of the case before the Court, in all its details, would be first exhibited. Next, looking back, the cases cited on both sides or occurring to the Chancellor himself, after all those of insufficient authenticity or authority and all precedents, which upon examination failed to cover the cases, had been first eliminated, would be examined by the light of each principle in turn, which Counsel on each side were contending for, and thence some generalisation would be evolved embracing the whole material but, at the same time, not extending beyond it<sup>3</sup>. Then, viewing the question from all its sides, this inference would be carefully compared with the practice in other courts, with the statute law, and with the demands of equity and conscience. Lastly, looking forwards, the principle, if it escaped so far, would be considered with regard to the future, and

<sup>1</sup> *Letters to Lord Mansfield* (1773), i. 5.

<sup>2</sup> *Observations on the Statutes*, 558.

<sup>3</sup> C. Butler, *Reminiscences*, i. 132: "He seems to have been anxious to bring every case decided by him within the application of some general principle; always taking care to express himself guardedly and perspicuously."



the consequences of establishing such a rule,—how far it could be expected to prove a solid foundation for later healthy developments, in accordance with the practice and ideals of equity, with established rights, general convenience and public policy, in its social, moral, and religious aspects.

The ultimate principle was often not found without much doubt and perplexity. Every avenue and possible issue had to be thoroughly explored before a decree could be pronounced. How complicated were the questions which had to be decided by exterior considerations may be gathered from such a case as *Bradley v. —*<sup>1</sup>, 1744, when the Chancellor decreed that a promise to pay a debt, out of a sum due by a third person, did not create a specific lien upon such a sum, the reason of his opinion being the effect which such promises would have in the case of heirs to landed property, which were then in these cases already held as not binding. What Paley terms "the competition of opposite analogies" was often extremely difficult to decide. The Chancellor was sometimes in great doubt. In *Adlington v. Cann*<sup>2</sup>, 1744, for instance, he says: "I have been under some doubts as to the determination of this case, [a will leaving property to charitable uses in intention], because, on the one hand, great inconveniences may arise from means being found out to evade and elude the statute of mortmain; and, on the other hand, it may be a dangerous thing to determine this case to be a trust; for I must break in upon the statute of frauds by admitting parole evidence to prove the testator intended his estate for charitable uses. Therefore to find out a medium was the great difficulty."

Upon some rare occasions, as we have already seen<sup>3</sup>, he avoided giving a decree at all. On the other hand, his decrees sometimes afforded him great satisfaction. "I am extremely well satisfied with the determination I shall make," he says in *Boteler v. Allington*<sup>4</sup>, 1747, a case turning on the nomination to a living.

In a long and complicated case, he would start upon his decree by first of all announcing his decision. Then, in order to support it, proceeding to his argument, he would first state, in the clearest terms, the exact questions to be decided, and the connection of each of these problems with the others, and then solve each of them successively. In *Vernon v. Vaudrey*<sup>5</sup>, these questions are ten in number, and some of them are reduced again into sub-divisions,

<sup>1</sup> 1 Ridgeway, 194.

<sup>2</sup> 3 Atk. 149.

<sup>3</sup> Above, p. 427.

<sup>4</sup> H. 569, f. 136; 3 Atk. 456, also 442.

<sup>5</sup> Barnardiston, 293.

In others, such as that of *O'Brien v. Lord Inchiquin*<sup>1</sup>, which turned upon the liability of real estate for payment of debts before the personal, when so ordered by the testator, he would clear away at the outside a whole crowd of perplexities, reduce the case at once to a single and clear issue, and restrict his decree within very definite limits. "The question has been differently stated, yet it is the same thing in fact; a distinction without a difference, a distinction in terms only and not in substance. For throw it into figures, and you will see both questions come into the same thing." He then considers the single issue left, first by the rule of equity, already established, concerning the liability of real and personal estate for the payment of debts, and then by the light of a number of cases cited by Counsel, six for Lord Inchiquin and two for O'Brien. Lastly, he applies the principle thus extracted to the will in question, and decides that personal estate must in the first place be liable for the debts and legacies.

But his decrees are in various forms, and his arguments are presented and developed differently, according to the nature and extent of the questions to be solved. They are all, however, distinguished by the same wonderful clearness both in thought and expression, by accurate learning, by penetrating analogies and completeness of definition and elucidation, and further by a power of comparison and generalisation, which raises them to the highest plane of jurisprudence and equity,—in a word, by precise scientific methods illumined by wide philosophical imagination.

"...Yorke, who on the mercy-seat  
Of Justice states the bounds of right and wrong;  
Not like the vulgar law-bewildered throng,  
Who in the maze of error, hope to meet  
Truth, or hope rather to delude with lies  
And airy phantoms, under truth's disguise.  
Some wrapt in precedents, and points decreed,  
Or lop or stretch the law to forms precise:  
Some, who the pedantry of rules despise,  
Plain sense adopt, from legal fetters freed;  
Sense without science, fleeting, unconfin'd,  
Is empty guess, and shifts with every wind.  
But he, thy Sire<sup>2</sup>, with more discerning toil,  
Rang'd the wide field, sagacious to explore  
Where lay dispers'd or hid the precious ore;  
Then form'd into a whole the gather'd spoil,  
Law, reason, equity, which now unite,  
Reflecting each on each a friendly light."

<sup>1</sup> Ridgeway, 230; Cox, i. 1; Ambler, i. 33, as *Inchiquin v. French*.

<sup>2</sup> Hawkins Browne, *Poems*, (1768), 140, addressed to Charles Yorke.

## V

We must now pass for a moment from the consideration of the jurisdiction of the Court of Chancery in its most brilliant period, and of the decrees of the greatest Judge that ever sat there, to the less satisfactory side of equity, and to the evils and inconveniences which attended its administration.

Much of the odium, which it incurred, belongs to the history of much later years with which it can be no part of our plan to deal, except so far as the later evils were said to be caused by earlier imperfections. Much of it again was undeserved, and was the result of ignorance, and of a failure to understand the true functions and limits of equity.

Lawyers, in common with doctors and parsons, have been the subject of somewhat conventional diatribes and pleasantries from time immemorial. The exposure of human frailty or stupidity, hitherto concealed under lofty ideals and imposing professional pretensions to learning and virtue, is generally received with satisfaction and amusement; and the frequent failures of the law, the lengthy and unintelligible methods and the jargon of lawyers, as well as the corruption of judges, have for ages been a fertile subject of ridicule<sup>1</sup>. That the formalities of legal procedure, and the frequent miscarriages of justice in individual cases, lent themselves to such criticisms and ridicule from the uninitiated cannot be denied; but at the same time much of this abuse of the law, at least in England, was undeserved, and arose from an entire misapprehension of its powers and functions.

It is commonly taken for granted that it is sufficient for a suitor to have the right on his side to claim relief from the law on the ground of natural justice. This of course was never true in any community at any period; for no human judge could administer such justice. In the first place, success in a suit depends not only on justice, but on the completeness of the proof and clearness of the evidence; and the absence of such proof has necessarily excluded large numbers of persons from obtaining relief. Again, even when the facts are clear, it sometimes happens that justice cannot be executed in individual cases. *De minimis non curat lex* is a necessary and essential maxim in law; and it is part of the higher conception of law by which, in the end, far more substantial justice is done, that it should be constructed upon wide principles,

<sup>1</sup> See e.g. Racine, *Les Plaideurs*, and Rabelais, *Pantagruel*, "Comment P. équitablement jugeait."

to do justice in general rather than in special and isolated or exceptional cases. A legal system, which relaxed its rules on all occasions and sacrificed its principles regardless of future consequences, in order to attain to ideal justice in each single case would, by its frequent contradictions and hesitations, overturn the very foundations of law and reduce it to an unintelligible confusion, the evils of which would be far-reaching and disastrous, and end in a general denial and failure of justice<sup>1</sup>. Lord Hardwicke refused consistently to break through rules of extensive and beneficial effect to admit an exception, when relief in a particular case would entail evil consequences in general. Thus in *Gorton v. Hancock*<sup>2</sup>, a case already cited, he overruled his own decree expressly on this consideration, saying: "I was struck at first with the appearance of hardship in the case, but such hardships must not induce the Court to break in upon its rules": and added: "Though this may be called a new case, not strictly within any rule nor warranted by any former precedent, yet must we remember that...cases coming before courts of justice are to be governed without distinction or exemption of any particular case from hardships peculiar to it<sup>3</sup>." "It should be observed," says Paley, "that every departure from former determinations, especially if they have often been repeated or long submitted to, strikes the stability of all legal title. It is not fixing a point anew, it is leaving everything unfixed....Uniformity is of more importance than equity, in proportion as a general uncertainty would be a greater evil than particular injustice<sup>4</sup>." Thus the possible and occasional failure of justice in an individual case was the price, which must of necessity be paid, for the infinitely greater benefit to the community in general of an intelligible and systematic legal system, and for certainty and security in the possession of property<sup>5</sup>.

Such a legal system, besides fixed rules and principles, also involved a whole language of technical terms, to which, in order to

<sup>1</sup> Maine, *Ancient Law*, 81; Ram, 20.

<sup>2</sup> Hargrave MSS, 383, f. 122; and see above, pp. 424, 479, 492.

<sup>3</sup> Cf. *Ld. Eldon* (Twiss (1846), ii. 478), "It is more important to maintain the rules of law than to provide against the hardships of particular cases."

<sup>4</sup> *Moral and Pol. Phil.*, bk. 6, ch. 8, *Works*, ii. 355-8.

<sup>5</sup> See also above, pp. 423 sqq. These important considerations seem to have been wholly overlooked by the Benthamites. James Mill, *e.g.*, in his attacks on the law, repeats with tiresome insistence such platitudes as the following: "The question of the wise man is, not what *is* done in the courts of law, but what *ought* to be done." "We shall now, however, decide that whenever the path which leads to truth is discovered, it is no longer the question who has *not* walked in it before, but who shall best walk in it for the future" (*Hist. of Brit. India*, v. 116 and 123).

obtain certainty in the law, fixed meanings were purposely attached, but which appeared to the uninitiated the jargon and verbiage of imposters, employed only to mystify, to add more pages to wills and deeds and to swell expenses.

The neglect to employ the proper technical terms in legal documents and to comply with long-established and necessary formalities in the desire to escape the "nets of the lawyers," and in the belief of the testator in the sufficiency of his own "common sense," was often the cause of expensive and protracted legal proceedings. A ludicrous case of this kind came up before Lord Hardwicke himself, when the will of Sir J. Bland had to be interpreted. The testator had made it himself, and "at the close of it, he said that he had disposed of his estate in so clear a manner that he thought it impossible for any lawyer to doubt about it. This will was afterwards contested, and it came before Lord Hardwicke, who said that he was so utterly at a loss to conceive what was the real intention of the testator, that he wished he could find some ground on which to form a conjecture<sup>1</sup>."

But even the most practised lawyers sometimes failed in avoiding ambiguities. Their wills frequently gave rise to litigation, and Lord Hardwicke had himself to adjudicate upon an ambiguity in that of his uncle, Sir Joseph Jekyll, Master of the Rolls, who had passed a large part of his life in the interpretation of wills and legal documents in Chancery. Numbers of cases of other kinds also, connected with contracts, real property, agencies, rights derived from feudal or other ancient customs, in spite of the efforts of the judges to make the law clear and certain, remained incomprehensible to the general public, and perplexed even skilled lawyers, who could not always foresee the issue at law or equity. These difficulties were often increased by badly worded statutes. In a "competition of opposite analogies" again, it was often doubtful which party would gain the victory. To all this must be added as well the "personal equation," the fact that the judges were human beings, and that evidence, however clear, has often different effects upon different minds.

These various drawbacks and limits to the power of the law and to the administration of justice were not understood or taken into account by the ordinary claimant in a suit, who relied on his own good faith and just cause as sufficient for obtaining instant satisfaction and redress; and who, if unsuccessful or disappointed by

<sup>1</sup> Related by Lord Kenyon in 8 Durnford and East, 502.

delays, would return home indignant to curse the unfairness or stupidity of the judges and the wickedness or incapacity of the lawyers<sup>1</sup>.

"No man e'er felt the halter draw,  
With good opinion of the law."

A great deal of unmerited unpopularity was thus incurred by the law in all periods. But no doubt some part of the adverse criticism was deserved, and the complaints against the law of expense and delay have by no means ceased in our own day. These complaints, as is well known, rose to a climax during the Chancellorship of Lord Eldon. It would have been no part of the plan of this work to have mentioned these, which were owing, after making allowance for the misrepresentations of political antagonists, there is little doubt, partly to the great increase of public business and partly to the idiosyncrasies of that great judge<sup>2</sup>, and also to the failure of the later Chancellors to treat equity from the philosophical standpoint, had not a whole series of writers, copying one from another without due care and making no attempt to verify the truth of the statement, maintained that the crush of equity business in later years was partly due to the dilatory methods introduced by Lord Hardwicke, and to the arrears of business then accumulated, which could not afterwards be disposed of. If this had been in any measure true, there would have been full justification and excuse for any failure to keep level with the enormous load of legal business, of which the Chancellor already, in the 18th century, had to dispose. It had long been thought too great

<sup>1</sup> See Paley, *Moral and Pol. Phil.* ii. 357.

<sup>2</sup> Lord Brougham, after eulogising his great abilities, said in the House of Lords, June 7, 1839 (*Parl. Deb.* 3 Series, xlvi. 58), "He had not originally, but acquired a very bad habit, which grew on him, of not attending, such was the real truth, to the arguments of Counsel who were arguing before him—the prolixity of Counsel securing the inattention of the judge—the inattention of the judge increasing by reaction the prolixity of the bar, till at last he decided cases at a great interval of time after hearing the arguments, not so much upon those arguments as upon his own judgment, formed by reading the whole papers in the cause." He had doubts about a will for 20 years, *Radnor v. Shafto*, 11 Vesey jun. 453; see also what has been already said concerning his judicial methods above p. 491, and vol. i. 142. Later, Dickens in his preface to *Bleak House*, declared that there was no exaggeration in his description of *Jarndyce v. Jarndyce*. "At the present moment there is a suit before the court which was commenced nearly 20 years ago, in which from 30 to 40 Counsel have been known to appear at one time, in which costs have been incurred to the amount of £70,000, which is a *friendly suit*, and which is (I am assured) no nearer to its termination now than when it was begun." There is no instance in the least approaching this state of things during Lord H.'s Chancellorship.

a burden for one man to bear, and plans for delegating the Chancellor's authority and jurisdiction to several Commissioners of the Great Seal had been often proposed, notably during the Commonwealth and at the Revolution, but never executed. Sir Edward Coke had pronounced it an impossible task; and in the reign of James I a Bill had been brought into Parliament for adding two more judges to the Court of Chancery, but had never been proceeded with<sup>1</sup>. According to the statements of their biographers, perhaps exaggerated, more than one Chancellor, of late years, including Lord Hardwicke's immediate predecessor, Lord Talbot, had been killed by over-work, and over-anxiety to cope with the gigantic work of Chancery and to satisfy the public; and these had not taken, like Lord Hardwicke, a leading and responsible part in the administration or in Parliament. In Lord Hardwicke's time, too, a great increase of Chancery business took place. Some of his contemporaries attributed the increase to the great reputation and to the enlightened judicial methods of the judge. No doubt this was one cause, but he himself ascribed it to the increase of commerce and to the natural progress and developement of the country, which advanced with leaps and bounds, when once the state had been established on solid and lasting foundations<sup>2</sup>.

He was perhaps the most industrious of all the Chancellors, giving immense time and attention to Chancery work, of which the many hours spent in court were only a portion, and never sacrificing his judicial duties to political or other engagements. Lawyers have always been noted for extraordinary endurance and capacity for undergoing long spells of work<sup>3</sup>, but Lord Hardwicke's powers seem to have been phenomenal. Besides presiding in the House of Lords<sup>4</sup> and his appeal work there, where causes were heard three times a week, on Mondays, Wednesdays and Fridays, beginning at eleven o'clock in the morning, the Chancellor sat five or six hours a day in his own court, where the sittings often opened at half-past seven<sup>5</sup>. He held late evening sittings, sometimes cases by consent

<sup>1</sup> Kerly, 172.

<sup>2</sup> See pp. 554-5; *Rep. of Chan. Comm.*, 1826, p. 7; cf. also Lord Eldon: "It was a generally admitted truth that the greater attendance a judge gave to causes, the more causes he had to attend to." (*Parl. Hist.* N.S. ix. 1326.)

<sup>3</sup> See, e.g. Lord Selborne's *Life*.

<sup>4</sup> In 1750 the Lords sat 52 days, in which 40 public and 33 private acts of parliament were passed (*Quarterly Rev.* xxx. 288), and in three years, 1752-54, 238 days. Twiss's *Life of Eldon*, ii. 442.

<sup>5</sup> N. 7, f. 204.

being heard at his own house, and frequently sat in his court till after midnight<sup>1</sup>. His successor, Lord Keeper Henley, was not equal to such exertions, and petitioned the King that these late sittings might be discontinued and that he might be allowed to finish his bottle of port in comfort<sup>2</sup>; and later Chancellors not often, perhaps, prolonged their business to such advanced hours<sup>3</sup>. The early sittings of the House of Lords also were discontinued by Lord Thurlow.

No personal blame, therefore, could be attributed to Lord Hardwicke, if arrears had accumulated and delays had increased. But as a matter of fact there is no foundation whatever for this assertion. The only authority, and that a perfectly worthless one, is the statement of the anonymous and mendacious correspondent of Richard Cooksey, who included this among a list of equally baseless accusations, one of which consisted in the ridiculous charge that the Chancellor had brought about the death of a young nephew, in order to get possession of his fortune<sup>4</sup>. It is to the same writer that the silly legends concerning Lord Hardwicke's early career are due. The falsity and worthlessness of such statements, it might have been thought, would be apparent immediately to the most superficial reader: but not only have many writers copied complacently the childish personal anecdotes contained in this composition, but have even been content to draw from this author

<sup>1</sup> Cooper, *Chancery Miscellanies*, 100; *Brief Account of the Court of Chancery*, 167-8; a case appointed for 6 p.m., H. 831, f. 217.

<sup>2</sup> *Dict. of Nat. Biog.*

<sup>3</sup> See however *Parl. Deb.* 3 S. xlviii. 76, June 7, 1839, when the Lord Ch. said: "Having to communicate with his learned friend the Vice-Chancellor this morning, he found that he had commenced his labours of this day precisely at the time when he (the Ld. Ch.) was closing the labours of yesterday, namely 4 o'clock in the morning, ...so that the Court of Chancery sat up all night."

<sup>4</sup> Cooksey's *Essays*, 76, 80 sqq. The passage is as follows: "His practice in the Court of Chancery, for which he is applauded as having introduced a regular system, was such as precluded all pretences for appeals or complaint. His decrees were very few, in comparison to the many causes that came under discussion in that court in his time. The hearings, re-hearings, references to masters, reports and exceptions to those reports, exorbitant fees to Counsel and the length of time to which every cause was protracted, made the suitors weary and glad to submit to any decree suggested and agreed upon by their Counsel, in which neither party could complain of being aggrieved by the judge of the court." Among the various absurdities and falsities which fill this composition a prominent space is allotted to the griefs of Ch. J. Willes, which are ignorantly and foolishly attributed to Lord H. having in early days treacherously repeated to Lord Chancellor Macclesfield some remarks made by Willes at the Chancellor's expense and which were never forgiven. It is not unlikely, therefore, that the writer had some connection with that judge, which might account for the hostility and abuse; cf. vol. i. 478 n.



their conception of Lord Hardwicke's conduct and methods as a judge<sup>1</sup>.

To contemporary pamphlets attacking the Court of Chancery more weight should be given, and a number of these have been cited with the object of discrediting Lord Hardwicke's administration. The dates of the greater portion of these publications, being anterior to his accession to office, 1737<sup>2</sup>, show that it was not his judicial methods that were criticised or any special delays at that time, but rather the general inconveniences which attended the practice of the law as a whole. They form part of a long series of general complaints and criticisms of the law, and of proposed reforms, which continue to be published in our own day, some of which have a solid foundation and call attention to abuses which might be remedied, but others of which are the result of ignorance and want of acquaintance with legal practice. In neither of the two pamphlets which alone survive after this attention to date, is there the slightest suggestion of delays caused by Lord Hardwicke's methods. In the first, *Animadversions upon the Recent*

<sup>1</sup> It may be convenient to name some of the writers who have thus fallen into error. Cooper, *A brief Account...rel. to the Court of Chancery* (1828), quotes this author as a dependable authority, pp. 16, 105, 137, and again in his *Lettres sur la Chancellerie*, 295-6 (1828). Parkes, *Hist. of the Court of Chancery* (1828), writing at the same date, quotes him again and declares his remarks not to be unfounded. The works of both these authors are undependable, the object of the first being apparently to slander Lord Eldon and of the latter to abuse the Judges and the Courts in order to absolve the solicitors from any responsibility for legal shortcomings. The same authority is again quoted in the House of Commons by H. Twiss, "Was he, that celebrated Chancellor, successful in reducing the arrears of his court? On the contrary, we find in the letter published by Mr Cooksey, etc., etc.", *Parl. Deb.* N.S. xix. 66-7 (1828). Next Welsby, whose life of Lord H. in *Lives of Eminent Judges* is largely a *réchauffé* of an article in the *Law Magazine*, iii. 72, again repeats the same calumnies. Twiss, in his *Life of Eldon*, is guilty of the same unfairness, quoting the same infected text to exalt Lord Eldon's achievements by comparison, ii. 452. Lastly Kerly, *Hist. of Equity*, 1890, 177 and 190, is still inspired by the same legends regarding Chancery delays; and the Vice-President of St John's College (W. S. Holdsworth) once more cites the same author as a credible authority in his *New History of English Law* (1903), i. 226. Lord Campbell has been chiefly responsible for spreading the false and silly tales of Lord H.'s personal career, first invented by the same anonymous correspondent, and the *Encyclopaedia Britannica* in previous editions, in the article on Lord Campbell, specially distinguished the latter's "Life of Lord H." as one of the most accurate in his *Lives of the Chancellors*. This has however been fortunately corrected in the latest edition (1911) of the work, where, nevertheless, the new article on Lord H. himself still retains numerous inaccuracies, and seems to depend chiefly on Lord C.'s account.

<sup>2</sup> With these must be included, *A Scene of corruption discovered...in a letter to...Lord Hardwicke, Lord High Ch. of G. Britain...* 1735, cited by Parkes, 332, obviously in error; see also Cooper, *Chancery Miscellanies*, where several complaints are quoted but none of this period.

*Laws of England*, 1750<sup>1</sup>, the writer reflects on the imperfections of the law and especially upon the Court of Chancery as the most dilatory and expensive; *but from any responsibility for these defects he especially exonerates the Chancellor*<sup>2</sup>. "The author is not bred to the law but had bitter experience"; and the character of his criticism, which is notwithstanding thoroughly sincere, can be gathered from his recommendations for reform which include among others, compulsory arbitration, taxation of lawyers, large money prizes for the best schemes of Chancery reform, and for the most correct compilation and reduction of laws and decrees into "...volumes, in ...o or ...o," wisely left in blank. The second, *Free Candid Disquisitions*, etc., 1751, by J. Fitzsimmonds, is nothing but a general criticism of the state of the law, and contains no special attack on the Court of Chancery. *The Law and Lawyers Laid open in 12 Visions*, 1737, dedicated to The Rt. Hon. P[hilip] L[ord] H[ardwicke], L[ord] C[hief] J[ustice] of the K[ing's] B[ench], is a tract of exactly the same character, and consists of a criticism of the law in general, such as may often be read in our own times, and of complaints that laws are too voluminous, too uncertain, that lawyers are too numerous and legal practice too tricky, advocating codification, and including an eulogy of Lord Hardwicke himself. In none of these publications is there a single word to substantiate or support the statement above mentioned concerning the special delays in Lord Hardwicke's time, and not a single sentence in which the Chancellor is adversely criticised. On the other hand, pamphlets of the same period<sup>3</sup> contain glowing eulogies of his judicial administration, which it is not necessary to quote, but to which it would have been more ingenuous of the author of the *History of the Court of Chancery* to have also referred. Charles Butler declares that the "eminent merit of his general administration of justice in his Court was admitted by all<sup>4</sup>." Another author especially mentions that he "daily despatched a multitude of suits in Chancery and removed, after the example of his worthy predecessor, [Lord Bacon], many obstacles that has (*sic*) delayed judgment in that Court<sup>5</sup>."

A modern writer<sup>6</sup> cites the two great cases of *Ryall v. Rolles*

<sup>1</sup> Not 1756, as stated by Lord Lyndhurst, *Parl. Deb.* 3 S. xlviii. 46, and who exaggerates here the testimony of these contemporary pamphlets.

<sup>2</sup> Yet Twiss in his *Life of Eldon*, ii. 452, can state that it was "levelled against Lord H. himself."

<sup>3</sup> E.g. *Reflections [etc.] touching the Law*, 1759.

<sup>4</sup> *Reminiscences*, i. 132.

<sup>5</sup> *Characters of two Lord Chancellors*, 15.

<sup>6</sup> Kerly, 190. See also some very inaccurate remarks, amounting almost to a *lucus a non lucendo*, on this same point, by Sir James Mackintosh, in his *Life of Sir Thomas More*, p. 64, *Cab. Encyclopaedia*.

and *Garth v. Cotton*, the first being heard in November 1747 and in February 1748, and receiving judgment in January 1750, and the other heard twice in 1750 and being decided in February 1753<sup>1</sup>, as illustrations of Lord Hardwicke's ordinary procedure and delays, and in support of the adverse criticism of his judicial methods. He states that they were taken "*almost at random* from the Reports"; whereas they are both included in White and Tudor's *Selection of Leading Cases in Equity* and are known to be two of the most difficult and complicated decided in the whole history of equity, raising new questions and establishing new principles. Other instances, but which bear an infinitesimal proportion to the hundreds of causes decided, can also be cited of such unusual delays<sup>2</sup>; but in these cases the time taken by the Chancellor was fully necessary and justifiable. It was often needful for the Judge to consider carefully his decree in private, and perhaps to consult additional authorities<sup>3</sup>. Every case, as a rule, was expected to be ended in one day; "immediate judgment" was "almost always pronounced upon it"; it was only rarely that they lasted more, and still more seldom that the Chancellor deferred giving his decree till another term<sup>4</sup>. Daines Barrington, a good authority, says emphatically:—"When a cause is once brought to a hearing, nothing can be more expeditious; the Lord Chancellor or the Master of the Rolls sits 5 or 6 hours in Court most days of the year, and 19 suits out of 20 receive an immediate determination<sup>5</sup>." Charles Yorke, writing on Aug. 15, 1749, to his Father, congratulates him on "having gone through your Seals with so much success and hope it will contribute to keep your paper of causes within a reasonable number, which to one who loves *nemini deferre justitiam* is a great satisfaction<sup>6</sup>."

During the debates in Parliament between 1810 and 1839 on the subject of Chancery reforms, the rapid and satisfactory despatch of business in Lord Hardwicke's time and his success in keeping down arrears compared with later delays and stagnation, were

<sup>1</sup> See these cases above, pp. 449, 463.

<sup>2</sup> E.g. *Adlington v. Cann*, which appears to have been begun July 28, 1740, and was postponed for a search to be made into precedents, and not decided till July 3, 1744 (3 Atk. 141); *Robinson v. Robinson* (2 Vesey, 225); *Oates v. Chapman* (1 Vesey, 542 and 2 100); and *Hearle v. Greenbank* (1 Vesey, 299); *ex p. Duplessis* (2 Vesey, 540).

<sup>3</sup> E.g. *Hill v. Smith*, 1739 (H. 667, f. 36), when Lord H. deferred his judgment for further deliberation, stating finally that his opinion had been completely changed since the first hearing. See Atkyns, i. 619; also *Ex parte Ricards*, Atkyns, iii. 519.

<sup>4</sup> The "learned advocate" in W. Seward's *Biographiana*, 574.

<sup>5</sup> *Observations on the Statutes* (1775), 559.

<sup>6</sup> H. 5, f. 74.

pointed out by several speakers. The fact was acknowledged by both sides. Lord Melbourne declared "The Court of Chancery in Lord Hardwicke's time [to have been] perfectly competent for the discharge of business before it<sup>1</sup>," and Lord Cottenham, then Lord Chancellor, took occasion to pronounce an eulogy on Lord Hardwicke and the "golden age of equity<sup>2</sup>." Various tables included in the Parliamentary Report of 1810-11 and compiled from the Registrar's Minute Books, show that, while the petitions, re-hearings, appeals, motions, and orders in bankruptcy and lunacy orders in Lord Eldon's time exceeded those in Lord Hardwicke's, the numbers under the headings of exceptions, further directions and equity reserved, pleas and demurrers were much larger under the latter, and the causes decided by Lord Hardwicke, which generally speaking constituted by far the most difficult, important and lengthy portion of all Chancery business, were nearly three times as many as those settled by Lord Eldon. In spite of the immense development of the country since the middle of the 18th century, the bills filed in Chancery in Lord Hardwicke's time (1745-1754) were greatly in excess of those in Lord Eldon's Chancellorship. In appeals to the House of Lords the proportion of cases decided to the numbers presented in Lord Hardwicke's time compares favourably with that determined in the later period. The statistics also, which give the amount of money of suitors lying in Chancery in the two periods, namely £1,600,000 in 1750, £25,000,000 in 1810, and £34,000,000 in 1812, are probably in themselves sufficient to exonerate Lord Hardwicke's administration of responsibility for the later congestion<sup>3</sup>. "The business of the Court of Chancery,"

<sup>1</sup> June 13, 1836, *Parl. Deb.* 3 S. xxxiv. p. 480.

<sup>2</sup> April 28, 1836, *Parl. Deb.* 3 S. xxxiii. p. 403 sqq.

<sup>3</sup> *Money of Parties in Court:*

1730	£1,007,298
1740	1,295,251
1750	1,665,160
1760	3,093,740
1800	17,505,912
1810	25,162,430

*Orders in Bankruptcy:*

1801-1810	2555
1747-1756	1162

*Orders on Lunatic Petitions:*

1801-1810	1139
1737-1746	484

(Of a later period no returns could be obtained.)

(*Parl. Papers, H. of Commons*, 1810-11. Report of the Committee appointed to inspect the Lords' Journals, May 27, 1811, pp. 8-9.)

*Number of bills filed in Chancery:*

	<i>Orig. bills:</i>	<i>Bills of Revivor or Supplement:</i>
1745	1863	201 Lord Hardwicke
1746	2032	209 "
1747	1916	222 "
1748	1665	233 "
1749	1816	262 "
1750	1515	229 "
1751	1590	265 "
1752	1023	153 "
1753	1865	304 "
1754	1313	233 "
(1800	1237	153 Lord Loughborough)
1801	1161	164 Lord Eldon
1802	1251	161 "
1803	1207	161 "
1804	1462	156 "
1805	1379	150 "
(1806	1424	160 Lord Erskine)
1807	1484	181 Lord Eldon
1808	1588	177 "
1809	1565	159 "

(*Parl. Papers, H. of Commons*, 1810-11. Report from the Committee appointed to enquire into the causes that retard suits in Chancery, 18 Juné, 1811, p. 32.)

## Business done. (From the Registrar's Minute Books.)

	Causes	Exceptions, further directions, eq. reserved	Re- hearings and appeals	Pleas and demurrers	Petitions	Motions
1745-46	202	87	7	31	198	3769
1746-47	178	92	6	28	178	3787
1747-48	193	88	6	32	198	3732
1748-49	181	57	5	27	170	4060
1749-50	178	75	6	27	205	4073
1750-51	120	53	6	26	128	2981
1751-52	140	68	6	23	157	3935
1752-53	170	62	9	30	153	4091
1753-54	139	64	3	24	143	4066
1754-55	137	66	4	26	123	3386
1800-1	87 (including 11 by consent)	43	2	10	333	4684
1801-1	52 (16 c.)	83	5	17	262	4745
1802-3	60 (9 c.)	33	5	12	206	4748
1803-4	87 (12 c.)	24	17	14	337	5160
1804-5	58 (8 c.)	21	17	22	318	6050
1805-6	42 (10 c.)	48	6	10	275	5674
1806-7	56 (10 c.)	47	9	37	253	6001
1807-8	41 (17 c.)	46	10	19	257	6909
1808-9	54 (15 c.)	28	9	18	207	6362
1809-10	33 (7 c.)	38	11	21	180	6730

(*Parl. Papers, H. of Commons*. Report from Committee appointed to inspect the Lords' Journals, 27 May, 1811, pp. 4-5.)

said Michael Angelo Taylor in the House of Commons on May 6, 1812, "was not greater now than it was in the time of Lord Chancellor Hardwicke. He had himself once thought that the business had really increased of late years, but on enquiry he found that it had not increased....As an illustration of the slowness of decision in the Court of Chancery, he needed only to state, that in Hilary term 1812 five decrees were pronounced and no appeals were decided....What was the reason, then, that so few causes were decided, while from the paper it appeared that, taking away bankruptcy actions, there were not more suits than in the time of Lord Chancellor Hardwicke?...The Lord Chancellor Hardwicke went on with great rapidity in the decision of cases. It was to be recollected too that he decided much of what now came before the Master of the Rolls. It might be said that he too had arrears. But at the end of a session he was obliged to leave over 100 causes to the next, because the solicitors could not keep pace with him." The speaker was supported in this statement by the high authority of Sir Samuel Romilly<sup>1</sup>. In the obituary notice published in the *Annual Register* for 1764 (p. 280), drawn up by his sons, special mention is made of his extraordinary despatch of the business of the Court of Chancery, notwithstanding its unprecedented increase in consequence of the Chancellor's great reputation and the growth of trade. Further evidence can be drawn from the law reports themselves, where in the case of contested wills, for instance, it often happens that proceedings in Chancery under Lord Hardwicke were begun and the case decided one or two years after the death of the testator<sup>2</sup>. It is obvious that such expedition would be impossible, if the Chancellor had his cause list loaded with arrears.

These facts and testimonies show clearly that Chancery business was in a very different condition under Lord Hardwicke from that which existed later and attracted public attention and criticism, and that in his time, as far as the Chancellor was himself concerned, the work of that court proceeded with smoothness and regularity.

But to press the signification of these figures too far would be misleading. It is obvious that the mere enumeration of cases decided must be an exceedingly inadequate method of forming an opinion of a judge's judicial capacity or of his energy or industry ;

<sup>1</sup> *Parl. Deb.* xxiii. 58-9; for further debates on this topic see xix. 260, xx. 437, N. S. ix. 736, x. 405, xvi. 716, xix. 51.

<sup>2</sup> *E.g. Inchiquin v. French* (Ridgeway, 230, Ambler, 33), Hilary, 1744, where the testator died 1741, and *Mogg v. Hodges*, Nov. 16, 1750 (1 Cox, 9), when the testator's will is dated April 6, 1748.

and, as a defender of Lord Eldon has pointed out, a large number of cases in Chancery were then decided on motion and never came to a decree, as was the custom in Lord Hardwicke's time, a fact which might do much to redress the balance against the former<sup>1</sup>. We will continue no longer a mean and odious comparison. Nor will we take any part in making the distinguished talents, and the long and exceptional public service of one great man, the ground and basis of attack upon, or disparagement of, his famous successor. It may readily be conceded that, in the later period, the Chancellor was more frequently interrupted in his judicial duties than in that of Lord Hardwicke's administration<sup>2</sup>, and that various unfavourable circumstances, the exact force of which it is difficult to judge, existed in Lord Eldon's time, which are fortunately absent in Lord Hardwicke's. But we have thought it necessary to correct mistakes, and though somewhat tedious, to point out that the assertion of one anonymous and mendacious writer, though reiterated a dozen times by authors of different character and authority, is not more worthy of credence on that account, and is entirely disproved by strong independent and official evidence.

Great celerity in making a decree, unless it proved well-founded, complete and decisive, compatible with established precedents and capable of supplying a principle on which other similar cases might hereafter be founded, would inevitably prove a cause of delay and of further litigation rather than of despatch<sup>3</sup>. "I have seen," said Lord Bacon, "an affectation of despatch turn utterly to delay at length; for the manner of it is to take the tale out of the Counsellor at the bar his mouth, and to give a cursory order,

<sup>1</sup> *Quarterly Review*, xxx. 283 sqq. We cannot however follow the writer in lumping together the number of *causes*, *petitions* and *motions*, and thus making out a case of superiority for Lord Eldon. His statistics of appeals to the Lords also, viz. Ld. H. 1737-1756—235 cases, Ld. Eldon 1801-1822—469 cases, appear to embrace a longer period by two years in the latter case than in the former and the whole calculation is vitiated by the fact that Ld. Eldon from 1813, besides the Master of the Rolls as in Lord H.'s time, had the services of another judge, as Vice-Chancellor in Chancery, while in the H. of Lords Ld. Redesdale took an active part in appeal cases from 1806. This fact the writer has entirely forgotten. See also *Ed. Rev.* xli. 419 sqq. Twiss's calculations (*Life of Eldon*, ii. pp. 425-432) are again vitiated by the same misleading arrangement and choice of years, and by electing to take only the three years 1752-4 of Ld. H.'s administration for comparison, although he had the statistics of the whole ten years in front of him, giving as one reason for his choice that they produced the *largest average of bills filed* (pp. 427, 430). On turning to the complete table it will be found that this is by no means the case.

<sup>2</sup> *E.g.* according to Twiss, whose figures however we follow with some distrust, H. attended the House of Lords where his duties were sometimes performed by a deputy, as Speaker in the years 1752-4, 233 days, and E. in 1819-21, 385.

<sup>3</sup> This was said to be the case with Lord Erskine's decisions.

nothing tending or conducing to the end of the business. It makes me remember what I heard one say of a Judge that sat in Chancery, that 'he would make 40 orders in a morning out of the way,' and it was out of the way indeed, for it was nothing to the end of the business. And this is that which makes 60, 80, or 100 orders in a cause to and fro begetting one another, like Penelope's coat, doing and undoing<sup>1</sup>."

Often delays were unavoidable. One great cause of such was the separation of the equity and common law jurisdictions. We have seen how the defects of the common law led in very early times to the rise of a supplementary jurisdiction, and how the gulf separating the two systems widened continually down to the Revolution, afterwards to abate under the influence of Lord Hardwicke himself<sup>2</sup>.

This separation of jurisdictions, though justified and rendered necessary by the peculiar developement and history of law in England, yet had grave disadvantages. It was often a question of great difficulty and anxiety to decide under which jurisdiction a suit should be begun, and an error on this point led to great pecuniary loss and delay; while sometimes a double suit, both at common law and equity, with all the attending expenses and postponements, was necessary. Again, when the facts or points of law were doubtful, the Chancellor, though he was not obliged, would often send the case to be tried at common law, or the Judges would be asked to give an opinion on the matter. Instances of inconvenience and delay thus occasioned were very frequent. The case of *George Anstis*<sup>3</sup>, 7 George II, which came before Lord Hardwicke as Chief Justice, is a good illustration. Here the plaintiff moved for a *mandamus* to compel the Archbishop of Canterbury to admit him as a Fellow to All Souls College as founder's kin. He was, however, refused the production of the original book of statutes on which he founded his claim. He had therefore no case to lay before the Court; and the Chief Justice, having no power to direct a discovery of the statutes, the plaintiff was compelled first to obtain this from the Court of Chancery. There, however, he could obtain nothing else, and would then have to return to the Court of King's Bench for relief. In *Dixon v. Parker*<sup>4</sup>, March 8, 1751, Lord Hardwicke advised the defendant,

<sup>1</sup> Quoted by Lord Eldon in his *Anecdote Book* (Twiss, ii. 486). See also the reply of the French Chancellor, D'Aguesseau, Lord H.'s contemporary, to the complaints of his delays. Butler, *Reminiscences*, i. 285.

<sup>2</sup> pp. 415, 420, 435 sqq.

<sup>3</sup> Cunningham, 37.

<sup>4</sup> 2 Vesey, 219.



since he could not himself make a final decree, and the case would have to "run out into a trial at law," to give voluntarily some compensation to the plaintiff.

The whole question was discussed by Lord Hardwicke in his letter to Lord Kames<sup>1</sup>. He did not deny the existence of these inconveniences but, in his view, an attempt to remedy them would result only in still greater evils. The ground of his opinion was the same as Lord Bacon's<sup>2</sup>, that an amalgamation of the two systems would inevitably result in the swamping of the settled maxims of the common law by equitable and discretionary principles. Common law held a far weaker and an inferior position at that time relatively to equity than it did later, when it had accepted many doctrines from the rival system and had thereby become greatly strengthened; and there is every reason to think that there were solid grounds for the apprehensions then expressed. The ancient and solid foundations of law and right would perhaps have been swept away and replaced by vague principles of abstract justice, interpreted without any uniformity by the various Judges, amidst which the national liberties might have perished. The confusion would then, in all probability, have spread from the law affecting personal rights and property to the criminal law which, in its turn becoming undecided and enfeebled, the whole fabric of society might have been endangered.

While Lord Hardwicke, however, gave no support to the idea of uniting the two jurisdictions in his time, the later amalgamation was largely owing and rendered possible by the developement, both in equity and law, which began under his influence<sup>3</sup>.

In the first place, the principles of equity became, as we have already seen, more fixed and systematic and less capable, than in earlier periods<sup>4</sup>, of extensive encroachments upon the common law, and during the rule of each succeeding Chancellor this tendency became still more marked. Simultaneously with this transformation in equity, a developement was taking place also in the common law, not towards further restrictions and rigidity, but on the contrary in the direction of expansion and equity.

Lord Mansfield was the great Judge whose name must always

<sup>1</sup> pp. 552-3.

<sup>2</sup> Neque enim servabitur distinctio casuum, si fiat commixtio jurisdictionum; sed arbitrium legem tandem trahet. *Letter on Jurisd. of the Marches, Works* (Spedding), vii. 602; *De Aug. Scient.*, Lib. viii., c. 3, Aph. 45.

<sup>3</sup> Above, pp. 436 sqq.

<sup>4</sup> See also *Proceedings of Jurid. Society*, ii. 290.

be especially associated with this developement. He carried into the common law the principles he had learned from Lord Hardwicke. "His ideas," said Burke, "go to the growing melioration of the law, by making its liberality keep pace with the demands of justice and the actual concerns of the world; not restricting the infinitely diversified occasions of men and the rules of natural justice within artificial circumscriptions<sup>1</sup>." He declared that he "never liked law so well as when it was like equity<sup>2</sup>"; that the law "works itself pure" by the fresh streams which it draws from its original fountains of justice<sup>3</sup>. "In the construction and exposition of the law, he had uniformly endeavoured to proceed upon the application of those rational principles of universal justice, which are recognised by every experienced jurist as a leading ground of legal obligation<sup>4</sup>." He went great lengths in introducing equitable principles into the common law, and his decisions were savagely assailed by Junius and his political adversaries. They have also been criticised by more impartial authorities and on better grounds. Thus Sir Frederick Pollock<sup>5</sup>, while calling him the most illustrious exponent of the rational and ethical tendency, considers that he "sometimes carried it further than a mature system would bear." In the well-known case of *Perrin v. Blake*, he is said to have "sacrificed the advantage of a settled rule to prevent a miscarriage of substantial justice." Undoubtedly, he showed much less caution and prudence in these leanings towards equity and "natural law" than Lord Hardwicke himself. He exposed himself to the charge of want of uniformity in his decisions. In the great Douglas case, for instance, in which certain evidence was undoubtedly forged, he rejected the doctrine that "false in one thing is false in all things"; while in the Anglesey case he laid down the principle that parole evidence might be cancelled by a clear proof of forgery. He went so far as to apply equitable rules to legal estate<sup>6</sup>, while Lord Hardwicke had decided in Chancery that the principles of interpreting equitable limitations were the same as in law<sup>7</sup>. The general result, however, was

<sup>1</sup> *Works* (1826), xiv. 385.

<sup>2</sup> Twiss, *Lord Eldon*, i. 235.

<sup>3</sup> Holliday, *Life of Mansfield*, 122.

<sup>4</sup> Goodeve, *Lord Mansfield*, 13.

<sup>5</sup> *Oxford Lectures*, p. 28; see also Ram, app. 428; Twiss, *Life of Eldon*, i. 235, where Lord Eldon seems to imply that Mansfield had no accurate knowledge of equity but only followed the ideal; Warren, *Law Studies*, i. 497 sqq. and ii. 1352; Holdsworth, *Hist. of Eng. Law*, i. 253; A. Stuart, *Letters to Lord Mansfield* (1773), Letter I.; see also, *Strictures on Eminent Lawyers*, 51 sqq.

<sup>6</sup> In *Doe v. Pott*, J. J. Park, *What are Courts of Equity?*, 30.

<sup>7</sup> With the one exception of words of regulation or modification, Kerly, 193.

undoubtedly to expand and vivify the rigidity of the common law, and the new development, in its general lines, can be traced directly to Lord Hardwicke's influence.

The legal system, which he had developed in Chancery, with its close attachment to precedents and rules and at the same time with its constant generalisations, its frequent incursions into the moral and social law, its keen intellectual analysis, its analogies drawn from Roman law and other sources, and its references to comparative jurisprudence, constituted a school of philosophy and of mental training which had considerable influence on many of the brighter intellects of the day and which, within the circle of the Bar itself, claimed many enthusiastic disciples. Of all Lord Hardwicke's followers, when once the splendid genius of his own son had been submerged in irretrievable calamity, none was more able than the brilliant Murray. For many years he had practised before him in the Court of Chancery, had listened to his arguments and had caught, to use his own expression, "some beams from his light." A great number of celebrated Judges and lawyers looked back to that court as the place where they received their legal training and acquired the principles of their profession<sup>1</sup>. But it was on Lord Mansfield that fell Lord Hardwicke's mantle. He followed in his footsteps. He had the same wide outlook, and the same knowledge of Roman law. He handed on Lord Hardwicke's doctrines and judicial methods, and he inherited also Lord Hardwicke's great traditions of the grandeur and dignity of the law, maintaining courageously the old doctrine of libel and repudiating the character of a "popular" judge, too much sought after by his rival and antagonist Lord Camden<sup>2</sup>.

Since their time the common law courts have accepted more and more principles from equity<sup>3</sup>. "The principles of Common Law have been superseded by those of Equity whenever they come in conflict, and the powerful administrative machinery of the Court of Chancery has been adapted to all the divisions of the High Court.... Thus what was termed Equity Jurisprudence now comprises the whole of the Law of England, with the exception of

<sup>1</sup> *E.g.* "He [Wilmot] seems indeed to have paid more particular attention to the Court of Chancery, where Lord Hardwicke presided, whom he used often to call his Master, and for whose wisdom and learning he always expressed the highest veneration." *Opinions of Sir John Eardley Wilmot*, 14.

<sup>2</sup> See Bishop Newton's description of Mansfield, *Life and Works* (1782), i. 102.

<sup>3</sup> Foster, *Federal Practice*, 2 sqq.; Kerly, 180, 192; Hemming, *Thoughts on the Fusion of Law and Equity*; Park, *What are Courts of Equity?*, 12, 21, 22; Fonblanque, *Treatise of Equity*, ii. 108-110, where examples are given.

Commercial Law (which itself seems now to have done its work), the Law of Wrongs and Administration Law<sup>1</sup>." At the same time, the discretionary powers of the Chancellor, which constituted the chief danger in an amalgamation of the two systems, practically disappeared, the two jurisdictions thus approaching nearer to each other till, before the modern Judicature Acts, which finally effected their union, it could be said that the difference in practice between equity and law was not much more than this, that one class of estates and rights were governed by 'legal' and the other by 'equitable' rules<sup>2</sup>. Both these developments, the "pacific penetration" of the common law by equity and the systematizing of equity itself, can be traced back to Lord Hardwicke; and the union, which he deprecated in his own lifetime as dangerous and premature, was at last effected in widely different conditions, as the direct result of his own teaching and influence<sup>3</sup>.

Meanwhile, the separation of the jurisdictions remained a very real cause of inconvenience, delay and expense. Often, however, complaints against the working of the law were less justified. The commissioners of 1826 were "satisfied that much misconception has arisen relative to the causes of that delay," and imputed much of it "to the carelessness of some parties, or to the obstinacy and knavery of others, and to the inattention or ignorance of their agents." Again: ignorance had led many to believe that a suit in Chancery could be brought within the same narrow limits as an ordinary common law case, but the subject of equity proceedings did not allow short or summary proceedings. Suits dealing with the administration of trusts endured as long as the trust continued, and the complicated system of land tenure, trusts and entails often necessitated protracted litigation<sup>4</sup>. The case of *La Noy v. Duchess of Atholl*<sup>5</sup>, for instance, was re-heard after a lapse of 18 years, but the postponement was due to the fact that Miss La Noy was not of age sooner. Examples of this sort were not infrequent. Occasionally Lord Hardwicke deferred important cases after the hearing for a day or two, when he would draw up his decree in writing, thereby treating the subject exhaustively

<sup>1</sup> Preface to Story (Grigsby); also Snell, 4.

<sup>2</sup> Park, *What are Courts of Equity?*, 13.

<sup>3</sup> It is curious to note that Roman law went through exactly the same developments, equity being at first a separate jurisdiction and being finally fused with "law" under one administration. Snell, 5; Story, 33.

<sup>4</sup> *Rep. of Chancery Comm.* 1826, p. 9.

<sup>5</sup> 9 Leach, *Modern*, 398-9; see a similar case, *Sir Robt. Walpole v. Lord Conway*, Barnardiston, 159.

and attaining far greater precision and accuracy, and a more logical arrangement of the subject, than was possible otherwise<sup>1</sup>. It was owing much to the great care which he bestowed on his decrees that they afterwards became so authoritative. There are no instances, however, in the reports of his decisions, as in those of Lord Eldon's, of cases coming up time after time, and being repeatedly postponed on one point after another. He was thoroughly conscious of the need for promptness in the administration of the law, and never attempted to introduce, even in his written decrees, any literary embellishments or to display his eloquence or learning.

He made great efforts to save parties in a suit unnecessary trouble, expense or anxiety. Thus in the *Duke of Marlborough v. Lord Godolphin*<sup>2</sup>, November 26, 1750, he said: "As I am satisfied what decree I ought to make, it is not proper to put it off, merely for the sake of putting my thoughts into better order and method." He then pronounced at once a long decree of ten pages. The reporter adds: "The next morning his Lordship said he had forgot to take notice of the cases cited for defendants, but there was one answer to them all," which he then stated. On another occasion having, in order to finish a case quickly and to avoid another day's delay, given his decree from memory, he afterwards dictated some further observations for the benefit of "gentlemen taking notes," which in his opinion were "very material," to add to the report of the case<sup>3</sup>. So in the great cause of *Earl of Derby v. Duke of Atholl*<sup>4</sup>, a fine opportunity for display of erudition and eloquence, he avoided entering into the difficult and abstruse questions connected with feudal customs and ancient institutions, and based his determination on "plain and general points," in order not to delay the parties or put them to the trouble and expense of further attendance. He would himself pilot a suitor through difficulties and delays in a case where the right was manifestly on his side<sup>5</sup>. Though the time allowed for filing exceptions, namely two terms and the vacations<sup>6</sup>, seems now excessive, he was careful to limit strictly the privilege of bringing re-hearings and bills of review. In *Bagshaw v. Spencer*<sup>7</sup> he declared that second

<sup>1</sup> Ram, 389; Lord Camden seldom wrote his judgments and usually dispensed even with notes, *Life* by Hardinge printed in Campbell, *Lives of the Chancellors*, v. 363. According to the latter (vii. 635), Lord Eldon scarcely ever wrote out his judgments, thus losing clearness and accuracy.

<sup>2</sup> 2 Vesey, 61.

<sup>3</sup> H. 665, f. 109, see also *Turnour Garth v. Baldwin*, H. 834, f. 413.

<sup>4</sup> 2 Vesey, 350.

<sup>5</sup> *Wharam v. Broughton*, 1 Vesey, 180.

<sup>6</sup> *Chancery Comm. Rep.* 1826, p. 71.

<sup>7</sup> Hargrave's copy of Vesey in Brit. Mus. i. 152.

re-hearings were contrary to the general rule of the Court; and his remarks in *Cunyngham v. Cunyngham*<sup>1</sup>, and often elsewhere, show that he was perfectly aware of the evils which might arise from this source and from subsidiary motions, enquiries and various issues of all kinds, which were a fertile cause of obstruction and delay in Chancery suits. Such opportunities were very carefully guarded and controlled, and often refused<sup>2</sup>. In *Smith v. Smith*, 1739, he said: "The Court ought to hold a very strict hand over them, for otherwise they may become dangerous and used for delays, and therefore I shall consider of some rule about them for the future<sup>3</sup>." Even Lord Lyndhurst, arguing on the other side to prove that Chancery business in 1839 was not more in arrears than in Lord Hardwicke's time, allows that he had more successful methods of dealing with unnecessary motions than the equity judges of his own day, and quotes him as saying: "I will not hear your motion, but the cause. The cause must be in progress, so that I can dispose both of the cause and of the motion at once<sup>4</sup>." He moreover showed the same caution in issuing orders<sup>5</sup>.

He discouraged petty suits in Chancery. In *Jesus College, Oxford v. Bloom*<sup>6</sup>, for instance, a case turning on the removal by the defendant of some timber worth £7 or £8, and some stones, the Chancellor declared that it ought to have been brought in the Sessions Court in Wales, that it was below the dignity of his Court, and "that he hoped never to see one of the like nature again." He dismissed the case with costs. In the same way he said in *Brace v. Taylor*<sup>7</sup>, that the small consequence of the bill was an inducement to the Court to dismiss it with costs.

The delays and expense in Chancery suits<sup>8</sup> were, however, chiefly due, not to the press of business in court or defects in the methods of hearing and deciding causes, but to long-established

<sup>1</sup> Ambler, 89.

<sup>2</sup> *Att.-Gen. v. Montgomery*, H. 668, f. 46, and H. 671, ff. 89 and 98 b; H. 832, f. 354; H. 667, ff. 20, 25, and 42; H. 668, f. 7 b, where he lays down the circumstances in which alone rehearings should be granted; and *Smith v. Smith*, where he enumerates the several methods of correcting errors in decrees, viz. by rehearing, by bill of review, and by supplemental bill, and dismisses the present bill on the ground that the petitioner knew of the matter now brought forward at the time of the former decree. H. 665, f. 16.

<sup>3</sup> H. 667, f. 33; see the rule below, p. 517.

<sup>4</sup> *Parl. Deb.* 3 S. xlviii. 44.

<sup>5</sup> 3 Atk. 523.

<sup>6</sup> Ambler, 54; 3 Atk. 262; H. 669, f. 61.

<sup>7</sup> 2 Atk. 252.

<sup>8</sup> Daines Barrington, who admits the existence of delays, gives as an excuse for them: "the frequent deaths of the parties," which exposes him to the rejoinder that the deaths were more probably the consequence rather than the cause of the protracted proceedings. (*Obs. on the Statutes*, 559.)

abuses prevalent among the inferior officers of the Court and the lower order of solicitors, the latter of whom were especially censured by the Commission of 1826<sup>1</sup>. These had been a subject of complaint from the earliest times<sup>2</sup>. In consequence of the grave scandals disclosed at Lord Macclesfield's impeachment, an enquiry had been instituted by the House of Commons during the years immediately preceding Lord Hardwicke's own elevation to the bench; and the committee, on which he himself served as Attorney-General, reported on the 18th April, 1732. They found that, owing to an absence of control and of public enquiry, there had been an unnecessary increase of officials and of "honorary attendants," that encouragement had been given to the taking of illegal fees, and that bills and answers, and legal documents generally, had been unduly extended in the interests of the clerks and officers of the Court. A further enquiry into the fees and position of the officials, on which Lord Hardwicke again served, reported on November 8, 1740.

As a result of these enquiries, some very important and far-reaching reforms, embodied in various orders of the Court, were carried out by Lord Hardwicke<sup>3</sup>. On July 2, 1739, he had issued an order<sup>4</sup>, defining the charges of the Accountant-General's office, a new institution established to safeguard the money of suitors in Chancery, in consequence of the late scandals connected with the masters, and on August 1, 1741, he published another<sup>5</sup>, directing all such funds to be paid into the bank of England. Shortly afterwards, in the same year, October 17, a very necessary order directed that no bills of supplement or review should be exhibited, without special leave of the Court, or without the deposit of £50 to answer the costs and damages of the other party<sup>6</sup>. In 1743 he

<sup>1</sup> C. Butler, *Rem.* ii. 264-290, and see above, vol. i. 142.

<sup>2</sup> Kerly, i. 155; Parkes, 129; *e.g.* also John Wesley's indignation at the first sight of "that foul monster, a Chancery bill! A scroll it was of 42 pages, in large folio, to tell a story which needed not to have taken up 40 lines! and stuffed with such stupid, senseless, improbable lies (many of them too quite foreign to the question), as I believe would have cost the compiler his life in any heathen court of either Greece or Rome. And this is equity in a Christian country!" *Journal* abridged by P. L. Parker, p. 125. On behalf of the solicitors, however, it must be remembered that when particular words and phrases had once been given by the Courts certain definite and technical meanings, it was undertaking a great responsibility to substitute others for the sake of brevity and to leave in any way the beaten track.

<sup>3</sup> "He earnestly set about to reform such abuses as still remained in the Court, in which he had the happiness in a great degree to succeed." *Characters of two Lord Chancellors* (1749), 15.

<sup>4</sup> Beames, *Orders in Chancery*, 359.

<sup>5</sup> *Ib.* 363.

<sup>6</sup> *Ib.* 366. See also *Astel v. Montgomery*, 2 Atk. 138.

published an order relating to the fees of examiners and to the hours of doing business in their office<sup>1</sup>.

But by far the most important was the order issued on November 28, 1743<sup>2</sup>. In this was laid down and published a detailed list of permissible fees of all the officers of the Court. A limit was placed to the recitals and to the number of copies, which no suitor, it was enjoined, was to be compelled to take unless absolutely required. All officials were forbidden to demand or receive a fee on pretence of expedition, and receipts, which were important as records of money expended by the suitor, were made compulsory. The Chancellor further required tables of all the fees and rules to be set up conspicuously in every office, while any official, who should not observe the rules, was warned that he exposed himself to severe punishment for contempt of court<sup>3</sup>.

Two later orders<sup>4</sup>, issued April 27, 1748, discouraged frivolous and vexatious suits, took measures for preventing defendants from being defrauded of their costs, and directed that answers and pleas, taken by commission in the country, should be properly signed. Incidentally a great number of directions were given by Lord Hardwicke in the course of judicial business, which altered in various ways the practice of the Court<sup>5</sup>.

Attempts have been made to belittle these reforms and, on the strength of an expression used by Lord Hardwicke on the issue of one of the orders, that it was published "until some further or other regulations or provisions shall be lawfully made<sup>6</sup>," it has

<sup>1</sup> Beames, *Orders of Chancery*, 368, note 7. Lord H. alludes to this order and the reasons which made it necessary in 2 Vesey, 597.

<sup>2</sup> Beames, 369.

<sup>3</sup> "It may, I apprehend, be assumed that previous to Lord H.'s time, the mode of drawing up decrees had become very lax, and that by the introduction of recitals or statements, much had very uselessly been added to the length of decrees. To correct this evil, it forms part of the order made by that great Judge that 'in original decrees and orders made on hearing of causes, the recitals previous to the exhibits read be of the substance and scope only of the pleadings, tending to the points in controversy, upon which the decree is founded, and be made in the most concise manner and not to contain any recitals immaterial to the points in question.' At the same time, the decrees were much more detailed and explicit than became the custom afterwards, 'so as almost to render any application to the Court for further directions unnecessary.'" Beames in Seton, *Forms of Decrees in Equity* (1830), viii., ix. See also H.'s remarks in *Baker v. Hart*, 2 Atk. 488.

<sup>4</sup> Beames, 450-1, and 2 Atk., 288-9, the latter order probably owing to *Barley v. Pearson*, 3 Atk., 439.

<sup>5</sup> See Seton, *Forms of Decrees*, *passim*; this work is mainly an enumeration of, or commentary upon, the rules laid down and the changes made by Lord H.

<sup>6</sup> Beames, 371.



been contended that they were only a makeshift or pretence, incomplete and imperfect, of little consequence and effect, and that the Chancellor never carried out the recommendations of the parliamentary committees, or the substantial reforms so often promised<sup>1</sup>. If, however, the orders are compared with the reports of the parliamentary committees, it will be seen that the reforms carry out closely their recommendations. The reason that no steps were taken to obtain parliamentary sanction to these or further reforms is obvious. Legislation was not necessary<sup>2</sup>. The orders of the Chancellor had full authority in his Court, and these now issued, it can hardly be doubted, struck at the root of many abuses and instituted far-reaching reforms. Lord Hardwicke's orders are by far the most important, ever issued by any Chancellor, and exceed Lord Clarendon's and Lord Coventry's, the only Chancellors whose orders figure at all prominently, both in detail and extent. They fill 94 printed pages, of which the order of 1743 alone comprises 80. He always upheld the new rules strictly in his Court, and put down abuses whenever they came to his notice. In *Smith v. Smith*<sup>3</sup>, 1751, he firmly suppressed an attempt of a master to create new fees in his office, and declared that not the least variation was to be made to the order of 1743. In *ex parte Smith*<sup>4</sup>, 1742, a whole petition having been recited *verbatim* in an affidavit of service, he declared that, if the attorneys in the country made a practice of it, he would for the future order the costs of the affidavit to come out of their own pockets. No proof of the wisdom and utility of these regulations could be greater than the fact that they lasted practically, without any alterations or additions, till Lord Eldon's time<sup>5</sup>, and continued

<sup>1</sup> Parkes, 323-4.

<sup>2</sup> It can scarcely be necessary to notice in the text such writers as Welsby, *Lives of Eminent English Judges*, p. 303, who does not scruple to say: "He abstained from suppressing abuses, because those abuses were profitable to him." It is obvious that since Lord Macclesfield's disgrace and the sale of offices was forbidden, the Chancellor, however corrupt, could scarcely have derived the least benefit, even indirectly, from such sources. But what will be thought of *Lord Chancellor Campbell*, who says (*Lives of the Chancellors*, v. 63-4), "No orders were made to correct them [the abuses]," and descends so low as to make the same base insinuation: "Lord H. could not have made a vigorous effort to regulate them without some sacrifice of his own pecuniary gains." Yet, in a subsequent page, in his *Life of Lord Bathurst*, v. 455, he actually refers to the orders himself.

<sup>3</sup> 2 Dickens, 789.

<sup>4</sup> 1 Atkyns, 139.

<sup>5</sup> There is nothing printed in Beames between Lord H.'s last order in 1748 and the year 1792.

for long afterwards to be the authority on which almost all fees were taken<sup>1</sup>.

There can be no reasonable doubt that the orders were effectual for a time and during the lifetime of their author. As years went on, it would seem, however, that they ceased to be observed in their original strictness. Bills, answers, and recitals, became again longer and more diffuse<sup>2</sup>. The officials again got the upper hand of the public, and the important rule, restricting the number of office copies, was no longer observed<sup>3</sup>.

## VI

Looking back on the great Chancellor's judicial work as a whole, we can say without fear of contradiction, that if the splendid maxims of the law and of the realm, *Nulli vendemus, nulli negabimus aut differemus rectum aut justitiam*, *Nullus recedat a curia cancellaria sine remedio*, were not always completely fulfilled, this was the inevitable result of the defects inherent in all human institutions, and of the great gulf ever fixed between the ideal and the most successful human effort towards its realisation. Lord Hardwicke throughout his long career strove with strong and single-minded purpose, and without intermission, towards the highest and the purest conceptions of law and justice. He added an intellectual element, which raised the system of English law to a higher plane, and gave it simultaneously the force of cohesion and expansion. Much of the influence which he exercised, however, was not intellectual but moral, the result of his freedom from prejudice and bias, of his keenness of observation, of his masculine common-sense and strength of will, of his firm, upright, and fearless character, of his strict sense and invariable fulfilment of duty, and of his personal self-possession and dignity. As a man and as a personality, he made a very great impression upon the whole legal profession. He guarded its fair fame and honour with the most

<sup>1</sup> *Parl. Papers* (1816), vol. viii., Report of Commissioners for examining into duties, etc. as to Court of Chancery, April 9, 1816; *Parl. Papers* (1849), vol. viii., p. viii., Report of Select Com. to enquire into fees, etc.; Seton, *Decrees in Equity*, viii.

<sup>2</sup> "We wish strongly to enforce the propriety of greater attention than appears now to be paid to the terms of Lord Hardwicke's order, which directs that the recitals shall be confined, [etc.] and to be made in the most concise manner, [etc.]" *Chancery Commission Report* (1826), 18.

<sup>3</sup> *Times*, Dec. 20, 1826, "Is the order of Lord Hardwicke which declares that the registrars are not entitled to be paid for copies, unless such copies are required by the parties, observed or not in the registrar's office? A. They are always required by the parties. Are not the copies now taken for the purpose of conferring a benefit upon the registrar? A. Entirely so, nothing else." Kerly, 268.

scrupulous and jealous care. Not that the English bench had ever been destitute of Judges of high character and talent. Lord Talbot, Lord Hardwicke's immediate predecessor, has been universally extolled for his genius and virtue; but Lord Hardwicke possessed a moral influence in Westminster Hall, arising partly from his great political place, partly from his unquestioned and unrivalled judicial reputation and from the respect due to his character and length of public service, more powerful than any Chancellor before or since his time. This influence was employed actively and unceasingly to cleanse the Courts from any stain which still lingered there, to guard them from even the approach of scandal, and to raise a high standard of professional honour and duty. The purity and the dignity of the Law were to him as the breath of life, essential to the very existence of the nation, the loss of which involved inevitably the corruption and dissolution of the state. While the executive and legislative functions of government were carried on largely by corrupt and interested methods, while the appointments to the various services of the state were decided mainly by personal claims and connexions, the fact that the Courts of Westminster remained unsullied by corruption and independent of outside influences, whether from the Court, from society, or from the people, was one of transcendent importance in English history. In the midst of so much that caused a feeling of distrust towards the rulers of the state, the people could place full confidence, if nowhere else, in the Judges and in the Courts of Law; and judicial impartiality and the fearless execution of justice remained henceforth the sheet anchor of the constitution and of the national liberties<sup>1</sup>.

Although singularly indifferent, as a rule, to political hostility or to personal attacks, the slightest reflection upon the law, or any insinuation against its fair fame, never failed to excite in him the highest anger and indignation, and to provoke severe reprisals or rebuke upon the offending person. He could not even tolerate the slightest ridicule on this subject, and was greatly displeased with Hogarth's caricature of himself and the Court of Chancery<sup>2</sup>. All such attempts to lower the prestige and reputation of the Courts of Justice seemed to him in the highest degree wicked and dangerous, and were treated with a severity which we, now happily accustomed to the just administration of the law for generations, can hardly

<sup>1</sup> See e.g. W. V. Osborne, plaintiff in the *Osborne* case (*Morning Post*, Feb. 2, 1912), "He was firmly convinced that day that the legal profession was the great bulwark of English liberty."

<sup>2</sup> See vol. iii. p. 462, also vol. i. p. 140.

understand ; but which, if regarded from the standpoint and circumstances of the times, appears intelligible and necessary<sup>1</sup>.

He defended the Courts with equal vigour against popular influences and an unscrupulous press. He committed the printer of the *St James's Evening Post* to prison for reflections against persons engaged in a cause before him<sup>2</sup>, saying: "There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety, both to themselves and their characters." He was extremely averse to the rash and ill-considered publications and reports of judicial proceedings, often a cause of unjustifiable notions of the law among the public<sup>3</sup>. At the same time, he did not shrink, or desire the Courts to be screened, from professional, or even popular criticism. In one of his last speeches in the House of Lords, he declared that the foundation of all that was best in English law was the necessity which was imposed on the judges of giving their judgments in public and of stating publicly their grounds and reasons<sup>4</sup>; and he had himself acknowledged the need, as far as possible, in his decrees, of satisfying the common-sense of the nation and people in general.

The great care which he observed in making judicial appointments had also much to do with the position of increased dignity, to which the law now attained. The judges promoted by him to the bench compare very favourably, both in character and ability, with those of the preceding period ; and although afterwards there succeeded to the bench, or to high official employment, uncultured or inconsiderable men, such as Lord Chancellor Northington and Sir Fletcher Norton, or popular judges like Lord Camden, yet the independence, purity and dignity of the administration of justice were never wholly lost after his time. They have remained ever since the priceless heritage of the English people, and the brightest and most precious jewels in the British Crown ; while the inviolability of the judges from attack has become as sacred a part of the constitution itself, as the irresponsibility of the Sovereign<sup>5</sup>.

<sup>1</sup> *E.g.* see pp. 3-20, 42 sqq., 54 sqq.

<sup>2</sup> 2 Atk. 471; also 2 Vesey, 520.

<sup>3</sup> See above, p. 433. In 1723 he had disapproved of the publication of a trial in which a suitor, apparently a client of his own, had failed to make good his case, as of the nature of an appeal from the courts of justice to the people. Vol. i. 77.

<sup>4</sup> See vol. iii. 263. Bacon had already said the same thing, *De Augmentis Scientiarum*, lib. 8, cap. 3; *Aphorism.* 38; and Burke was to repeat it. *Works* (1826), xiv. 314 sqq.

<sup>5</sup> The only possible constitutional method, as is well known, of attacking a judge is a direct censure and a motion to remove him in Parliament. Recently, however, some deplorable breaches of this law have occurred.

These higher claims by the law have not always been willingly granted. The elder Mill, echoing the ideas of Bentham, complains: "What they [the lawyers] have endeavoured from an early date to create and establish in the minds of their countrymen is a belief, that it is criminal even to express blame of them or their system. This endeavour has hardly been less diligent than it has been successful. The belief has grown into one of the most rooted principles in the minds of the more opulent classes of Englishmen.... Who but those who have rendered up their understandings to the will of the deceivers can believe this wretched misrepresentation of the human mind...?" In spite of these shrill remonstrances, however, the status of the judges is to-day, what Lord Hardwicke strove to make it, more honourable, more independent, and more popular than in any other country<sup>1</sup>.

The change is the more striking if it be remembered that, at the time when Lord Hardwicke first became Chancellor, only eleven brief years had passed since the scandals connected with the defalcations of the trustees in Chancery had been exposed, and the painful and humiliating spectacle had been presented of the Lord Chancellor, the Head of the Law and the Representative of the Sovereign, bending on his knees before the Lord Chief Justice in the House of Lords, publicly acknowledging his connivance with fraud, and receiving the sentence of his peers. Only three years again had gone by since Lord King slumbered on his bench, and left the cases to be decided by the contending Counsel. A new atmosphere was now breathed in Westminster Hall; examples of similar misconduct and incapacity never occurred again, but were relegated to the curious history of the past. The Mayor of Yarmouth, who had failed to move with the times, indeed made an attempt to bribe Lord Hardwicke with a gift of £200; and the Chancellor's porter, who had been in his service for 20 years, was brought before the Court for having himself put the Great Seal to a writ<sup>2</sup>; but these incidents now already appear as ludicrous anachronisms, and as survivals from a very different state of morals

<sup>1</sup> *E.g.* the words of the Master of the Rolls on a recent occasion when dining at the Mansion House: "There was something in the attitude of the public of this country towards the judges of the land, which differed from that of other countries. It was a position to which he thought the judges were not altogether disentitled. The reason of such an attitude was that the training of the judges in this country was entirely different from that which prevailed in other countries. Law in England was not administered in the dark; everything was done in public, with the assistance of a highly-educated bar." *Standard*, June 20, 1903.

<sup>2</sup> H. 831, ff. 121 sqq. and H. 830, f. 356 b; and see vol. i. 411.

and customs<sup>1</sup>. Writing to the Duke of Newcastle, on January 28, 1762, Charles Yorke, now Attorney-General, and who had been counsel for Lord Bute in an appeal case before his Father and the House of Lords, which had failed, says, "I never in my life knew Lord Hardwicke's opinion in a cause till the decision of it<sup>2</sup>."

Lord Hardwicke impersonated strikingly on the bench the dignity of the law, with the "Certainty" and "Repose" which were the groundwork of his conceptions of equity. His speech was clear, convincing and impressive, rather than eloquent. His, as Lord Lyttelton wrote, was:

That clear, that nervous Eloquence, which scorns  
The Paint of Art, but gives to every Thought  
It's just and native Grace; whose virtuous Pow'r  
Our conquered Passions rules, but unenthral'd  
Leaves our enlightened Reason<sup>3</sup>.

He despised displays of oratory generally, but more especially in a court of justice, as misplaced and meretricious. In this he differed much from Lord Mansfield, who possessed a great natural gift of eloquence and is known to have practised the art assiduously, and sometimes, with Pope's assistance, before the looking-glass<sup>4</sup>. He had none of Lord Mansfield's oratorical manner<sup>5</sup>. His bearing was invariably composed and reserved, effective by its simplicity, dignity, and quiet self-possession and authority, but not marked by any striking or dramatic effort. His temper and his forbearance were unflinching. He was noted, as a judge, for the courtesy which he showed to all who came into his Court<sup>6</sup>, and for his mildness, geniality and good nature. His authority being unquestioned, there is no record of any of those passages of arms, scenes or repartees, which enliven the dull columns of law reports and proceedings, but which are often destructive of the dignity of the tribunal, and interfere with the conduct of public business. Only once have his Reporters recorded a witticism<sup>7</sup>.

<sup>1</sup> The old Duchess of Marlborough scrupled to visit Lady H. while a case of hers was depending in Chancery; see vol. i. 219, 224. There was one attempt made to bribe Lord Eldon also.

<sup>2</sup> N. 249, f. 54.

<sup>3</sup> H. 249, f. 243.

<sup>4</sup> Holliday, *Life of Mansfield*, 24.

<sup>5</sup> See e.g. *State Trials*, xix. 1401 sqq.

<sup>6</sup> The anecdote told of his civility to a descendant of Cromwell is certainly untrue. It refers to Richard Cromwell, the Protector's son, and belongs to a date long before Lord H.'s elevation to the bench (see *Noble's House of Cromwell*, i. 174). But the tradition is perhaps an illustration of the kindly disposition universally attributed to him.

<sup>7</sup> 1 Atkyns, 278. In the case of *Moore v. Moore*, the wife of the plaintiff had run

"He might perhaps," writes a political adversary, "be cited as the only example, in this country, of the perfect picture and character of a good judge which my Lord Bacon hath so admirably drawn<sup>1</sup>." "Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident." His speech was, "with gravity as one of the sages of the law, and not talkative, nor with impertinent flying out to show learning." He did not "affect the opinion of pregnancy and expedition by an impatient and catching hearing of the counsellors at the bar<sup>2</sup>." He was especially distinguished for the courtesy, patience and attention with which he listened to the speeches of Counsel. Like a great predecessor in the common law, "he would bear with the meanest and give every man his full scope<sup>3</sup>." He once said, on the occasion of a case, which he pronounced a "very plain one," being argued before him, "When gentlemen of learning and ability seem serious in the debate of a question, it is fit for Judges to pay some attention to their arguments<sup>4</sup>." No doubt his time was sometimes wasted, but he would often obtain valuable assistance and information; and he gained the confidence of the bar and of the public by these outward marks of attention, so that, when he pronounced his decree, every person present in the Court felt that all available light had been cast upon the points in dispute, and that every care had been taken by the Judge to arrive at a just decision. His example was by no means always followed. Lord Mansfield frequently read his newspaper when the speeches of Counsel ceased to interest him; Lord Brougham wrote articles for the reviews; and Lord Eldon, towards the close of his career, was said to have lost the power of

away from him, who sought relief from the Court from paying her an annuity. The *Attorney-General*, after the decree had been pronounced, in his innocence remarked that this was so uncommon a case that probably it would never happen again, to which the Chancellor replied: "If you think so you must have a very good opinion of the ladies," and quoted his Terence:

In amore haec omnia insunt vitia; injuriae,  
Suspiciones, inimicitiae, indutiae,  
Bellum, pax rursum.

<sup>1</sup> *Critical Rev.* xviii. 432.

<sup>2</sup> Essay on *Judicature* and Speech to Mr Justice Hutton, *Life and Letters* (Spedding), vi. 202.

<sup>3</sup> Burnet's *Life of Sir Matthew Hale* (1682), 177.

<sup>4</sup> H. 831, f. 165, *Attorney-General v. Graves*; and above, vol. i. 141, "Courts of Judicature can determine causes only upon what is laid before them."

listening, and to have given his decisions independently from his own investigation of the case<sup>1</sup>.

His manner was particularly considerate to the younger barristers, and many of them in after years looked back with gratitude to the help and encouragement which they had received. No more sincere tribute has ever been paid to a great man's memory than that of Charles Ambler, who reported many of his decisions and rose afterwards to high office. "Many of the cases," he says in the introduction to his Reports, "contain the determination of that illustrious person, the late Lord Hardwicke. To him I am indebted for the little knowledge I may have attained in the Profession; and I cannot, consistent with my feelings, let this opportunity pass, without expressing my grateful remembrance of the encouragement, which, in common with other young Gentlemen at the Bar, I experienced from him. That noble person was indeed eminently qualified for the high office which he filled for near 20 years, with the greatest reputation to himself and satisfaction to the public. His knowledge was sound and extensive; the clear and comprehensive manner in which he delivered his opinions, could not but make the dullest hearer sensible of their weight. He shone in those chief characteristics of a judge, temper and patience. He heard all with attention; and then decided with readiness, enforcing his decrees with such convincing reasoning as equally gave information to the bar, and satisfaction to the parties. *Etiam quos contra statuit aequos placatosque dimisit.* He greatly encouraged industry in young gentlemen, by showing particular attention to their arguments, and noticing what would admit of approbation. He was engaging and polite in his manner, and yet failed not in every point to support the dignity of his office. He commanded universal esteem and reverence<sup>2</sup>." Another of his reporters, a barrister of his court, John Tracy Atkyns, applies to him<sup>3</sup> the eulogy pronounced by Cicero upon the genius of the Roman lawyer, Servius Sulpicius: "Ser. Sulpicii vita multis erit praeclarisque monumentis ad omnem memoriam commendata....Admirabilis quaedam et incredibilis ac paene divina ejus in legibus interpretandis, aequitate explicanda scientia...nec enim ille magis juris

<sup>1</sup> See vol. i. 142.

<sup>2</sup> See also *Characters of two Lord Chancellors*, 15, Viner's dedication in his *Abridgment of Law*, and the prefaces of Ridgeway and Barnardiston.

<sup>3</sup> *Reports*, Pref. vol. 1.



consultus quam justitiæ fuit<sup>1</sup>." "The Earl of Hardwicke," writes "a learned advocate" in W. Seward's *Biographiana*<sup>2</sup>, "was certainly one of the greatest ornaments of the English nation.... The period, during which he presided in Chancery, is an era in the judicature of that Court. The bar was never more respectable, but the superior powers of his Lordship were universally felt and acknowledged; and excepting some petulant expressions, which fell from Lord Chief Justice Willes, when he was called to his assistance in the case of *Omychund* against *Barker*<sup>3</sup>, his Lordship was treated in his Court with a degree of respect that bordered nearly on veneration. He was most patient in hearing a cause.... In his arguments from the Bench his language was easy and dignified; he displayed a profusion of legal learning; his mode of applying it was luminous, and his conclusions carried conviction." "His strength and judgment," says the elder Jeremy Bentham, who practised as a solicitor in his court, "his great knowledge of the law, his evenness of temper, which was never known to be ruffled or discomposed, and his affability, condescension and courtesy to all about him, gained him the love and admiration of everyone that had occasion to attend the Court wherein he presided<sup>4</sup>."

Lord Hardwicke, though a great political personage, and often called away to affairs of State, remained at heart a member of the bar. He was essentially a great lawyer, and his judicial duties always remained his first care and his chief interest. Writing to his son, Charles Yorke, who was following in his footsteps, but who in a moment of difficulty was contemplating the abandonment of the bar, he declared the law to be the most independent and advantageous profession a man could enter<sup>5</sup>. No doubt, much of his great popularity and influence in Westminster Hall was due to this; for the bar felt him to be one of themselves, respecting the same traditions and bound by the same interests.

His method of delivering his decrees was distinguished by conspicuous fairness. It was observed that he never slurred over or neglected an argument in order to secure some principle; but, on the contrary, allowed to each its full significance, often adding

<sup>1</sup> *Orat. Phil.* ix. 5.

<sup>2</sup> (1799) p. 572.

<sup>3</sup> Above, p. 457, and see vol. i. 478 n.

<sup>4</sup> Cooksey's *Essays*, 53 and 62.

<sup>5</sup> Below, vol. iii. 416; and cf. Lord Chesterfield to the same effect, *Letters* (Bradshaw)

further force to them by drawing upon his own stores of legal learning or by resetting the argument itself in a clearer light<sup>1</sup>. Lord Camden, it is true, strikes a single discordant note in the general consensus of opinion, being reported to have declared that Lord Hardwicke's "clearness of arrangement and comprehension of the subject were masterly, but that his *address* (and he laid emphasis upon the word), in the turn which he gave to all, whether he was in the right or 'was to make the worse appear the better reason,' was like magic<sup>2</sup>." This statement is completely inconsistent with the opinion formed by every other contemporary of Lord Hardwicke, who expressly remark upon the total absence of such "address." Andrew Stuart, for instance, a good authority, and of high standing in the law, speaking of the "management of causes," says: "It is a praise which that perfect model of a judge, the great and good Lord Hardwicke, would have disdained. Ever attentive to the interests of justice and of truth, and ignorant of parties in questions of civil right, he made it his study not only to search to the bottom and satisfy his own mind, on which side the truth lay, but in delivering his sentiments, to state in all their extent, and with all the force that was due to them, the facts and arguments of both parties<sup>3</sup>." No weight must be attached to this rumoured saying of Lord Camden's. It comes to us only at secondhand, and through Lord Campbell, a very doubtful reporter; it is probably inaccurately related, and it is certain that the expression does not represent Lord Camden's real and deliberate opinion; for his "veneration" for Lord Hardwicke has been noted by the writer almost on the same page<sup>4</sup>. The record of Lord Hardwicke's judicial decisions remains more-over to be consulted by all; and even a superficial reference to the pages of the reports shows this conception not to have the slightest foundation.

It is said that Lord Hardwicke's decisions were so convincing, that even the parties who lost their cause departed satisfied that justice had been done<sup>5</sup>. The great Fielding writes of him as presiding in his Court "with a knowledge which nothing escapes, a penetration which nothing can deceive and an integrity which

<sup>1</sup> *E.g.* in *Reeve v. Attorney-General*, H. 665, f. 93; also *Law Mag.* iii. 98.

<sup>2</sup> *Life of Lord C.* by C. Hardinge, printed by Campbell, *Lives of the Chancellors*, v. 361, from Lord Camden's MS.

<sup>3</sup> *Letters to Lord Mansfield*, i. p. 27.

<sup>4</sup> Campbell, *Lives of the Chancellors*, v. 357; there is no trace of the MS. now among Lord Camden's papers and the whole rests upon Lord Campbell's authority only.

<sup>5</sup> See above, p. 526.

nothing can corrupt<sup>1</sup>," and speaks of his authority as "the highest which doth now exist or which perhaps ever did exist in this kingdom<sup>2</sup>." "When his Lordship pronounced his decrees," said Lord Mansfield, "Wisdom Herself might be supposed to speak," and it is a curious fact that, besides Lord Mansfield, such different persons as Edmund Burke and John Wilkes, in describing Lord Hardwicke giving judgment from the bench, used exactly the same expression<sup>3</sup>.

These remarkable judicial qualities were enhanced and set off by a singularly handsome person and good looks in which the freshness of youth, it is said, was retained till old age. His countenance was kindly and dignified. "It is generally allowed," says a contemporary, "that his address was easy, his aspect gracious and manly, joined with a clear and sonorous voice<sup>4</sup>." The author of the *Causidicade*, a scurrilous satire of 1743, on the legal tribunals, describes his appearance in Court when deciding on the claims of various individuals for the supposed office of "Inquisitor-General<sup>5</sup>," in his wig and with a nosegay in one of his "lily-white hands."

So handsome he look'd, thus equipt on the Bench,  
You'd have sworn 'twas Lord *Fanny*<sup>6</sup> or some pretty Wench;  
He open'd the Cause why they met, with a Voice  
So wondrously sweet and peculiarly choice  
That charming himself, he quite charm'd all the Bar;  
The Crowd will admire what's above them and stare.

"Multitudes," Lord Camden related, "would flock into the Court of Chancery to hear Lord Hardwicke, as to hear Garrick<sup>7</sup>." His pointed sayings were remembered and repeated<sup>8</sup>. "The talents," says Charles Butler, "displayed by Lord Hardwicke in the senate and on the bench, were the universal theme of panegyric<sup>9</sup>." "When he quitted it," another contemporary, Edward Wynne, and a member of the Bar, writes, "he left a name that will be mentioned with honour, as long as Westminster Hall lasts<sup>10</sup>."

<sup>1</sup> *Tom Jones*, Bk. iv. ch. vi.

<sup>2</sup> Above, p. 53.

<sup>3</sup> Butler, *Reminiscences*, i. 125; Seward's *Anecdotes*, ii. 394.

<sup>4</sup> *Character of two Lord Chancellors* (1749), 12.

<sup>5</sup> p. 1; also *Causticks applied to the Causidicade*, where the author of the latter is rebuked for his impertinences.

<sup>6</sup> A nickname applied to Lord Hervey by Pope. It cannot be said that these good looks, to which allusion is often made by Lord Hardwicke's contemporaries, appear strikingly in his portraits.

<sup>7</sup> Hardinge in Campbell, *Lives of the Chancellors*, v. 361; also H. 26, f. 34.

<sup>8</sup> There is one retailed by Dr Johnson, Lord Hardwicke's appreciation of Dirleton's *Doubts*, of which he said: "His doubts are better than most people's certainties." Boswell, *Life of J. (Hill)*, iii. 205.

<sup>9</sup> *Reminiscences*, i. 132.

<sup>10</sup> *Miscellany* (1765), 323.

In all the long annals of Westminster Hall, the Law had never appeared so venerable and authoritative and, at the same time, so modern and so popular. At no other period did the great tribunal of equity approach so near to the grand and mighty conception of justice, divine in its origin, receding into the unfathomable and mysterious past, and thence drawing its immense power and influence, and yet, at the same time, human in its present developments, still changing and expanding with the necessities of new times as a living power, destined to spread throughout the whole empire in every part of the globe, to be the enduring link to bind America to Britain, and to show itself a force fit for the governance of the world.

The retirement of the great Chancellor marked not only the termination of a period in his own life, but the close of a memorable epoch in the legal annals of England. It was felt to be so by his contemporaries; and his final farewell of that court, where he had so long presided in undisputed ascendancy and with universal applause, could not have been wanting in emotion and solemnity.

This chapter cannot be closed more fitly than by quoting the eloquent eulogy, pronounced upon the Earl of Hardwicke by his greatest disciple, Lord Mansfield. The occasion was a special and a striking one. It was the celebration in the Hall of Lincoln's Inn of Lord Mansfield's elevation to the bench, while the same moment marked the close of Lord Hardwicke's memorable Chancellorship and of the attainment of office by the brilliant Charles Yorke, to whom now fell the honour of complimenting the new Lord Chief Justice and who, as a spectator of the scene recalls, was acclaimed by all present, on rising to make his speech, as "the worthy son of the great Lord Hardwicke." In his reply Lord Mansfield said:

"...If I have had in any measure success in my profession, it is owing to the great man, who has presided in our highest Courts of Judicature the whole time I attended the bar. It was impossible to attend him, to sit under him every day, without catching some beams from his light<sup>1</sup>....If we can arrogate nothing to ourselves, we may boast the school we were brought up in; the scholar may glory in his master, and we may challenge past ages to show us his equal.

"My Lord Bacon had the same extent of thought, and the same strength of language and expression; but his life had a stain.

<sup>1</sup> Here followed a description of Lord H.'s talents which the biographer has unfortunately omitted.

"My Lord Clarendon had the same abilities, and the same zeal for the constitution of his country; but the civil war prevented his laying deep the foundations of law, and the avocations of politics interrupted the business of the Chancellor.

"My Lord Somers came the nearest to his character; but his time was short, and envy and faction sullied the lustre of his glory.

"It is the peculiar felicity of the great man I am speaking of, to have presided very near twenty years, and to have shone with a splendour, that has risen superior to faction and that has subdued envy.

"I did not intend to have said, I should not have said, so much upon this occasion, but that, in this situation, with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric.

"For you, Sir [addressing the new Solicitor-General], you have given great pledges to your country; and large as the expectations of the public are concerning you, I dare say you will answer them...<sup>1</sup>."

His speech was received with a loud and general tribute of applause, the echoes of which have not yet wholly died away.

<sup>1</sup> Holliday, *Life of Lord Mansfield*, 105.

## CORRESPONDENCE

*Duncan Forbes, President of the Session in Scotland, to the  
Lord Chancellor*

[H. 98, f. 2.]

EDINBURGH, Dec. 27, 1737.

MY LORD,

Since the state of life, to which your advice principally determined me, denies me<sup>1</sup> the accustomed pleasure of seeing you about this time of the year, permit me, now that your Lordship has some leisure and that I have a few days for respiration by our Yule vacance, to tell you that I am alive and that no man living is more your humble servant.—I took the chair in our court, full of the fears I expressed to your Lordship, balanced by the hopes, which your opinion gave me; and after some months experience, I continue still in the same state of doubt. By a steady pursuit of what my poor judgment leads me to think right, I have broke my brethren from some very perverse customs and brought them into a method, that is somewhat more promising, than what they pursued before; and upon observing this, the mob flatter themselves with hopes of a very great alteration to the better. But I, who know what stuff my brethren are made of, moderate my expectations; and fear that when we become more familiar, they will stand less in awe and relapse into their former disorder; which of us guess right, time must discover. For my part, I am resolved, if contradiction do not put an end to me, to try for some time what patience and application will do; and when the experiment is fully made, if I cannot succeed, I flatter myself I shall have your consent to retire to the country and enjoy myself for the poor remainder of life.

Having thus given you some account of myself, with which I have no right to trouble you, otherwise than as by your constant indulgence to me, you have taught me to think that you take some concern in me, give me leave to beg to know from you whether this is likely to be a proper season for attempting any amendment of our Law, in which 30 years experience since the Union has discovered many blemishes, and whether, if the judges of the Session could agree upon heads of a bill for that end, ther[e] might be hopes of passing it, without alterations from hands, that may not be so well acquainted with the subject. If I could with reason hope that a bill so settled there would pass unaltered, I would set about it without loss of time, and it might pass this season or the next; but if I may not rely on that, I should rather choose to jog on as we are, than to risk amendments, which by unskilful hands might be carried too far.

<sup>1</sup> This great man (see vol. i. 421) had just been appointed, with Lord H.'s approbation and support, President of the Court of Session.

I have nothing of news kind to acquaint your Lordship with from this country, but that the ferment about the Edinburgh Bill<sup>1</sup> is now happily subsided. Everybody (a few sanguine patriots excepted) shewed, and still shew, a very becoming concern for the loss the nation has suffered through the death of the late Queen<sup>2</sup>, and the mob that was lately offended is now returned to a proper temper. Our manufactures promise to go forward; and should they stand in need of your Lordship's assistance, you will be called upon.

It will be indulgence to me if you pardon the trouble that reading this impertinent letter may give you; but it will be doing me strict justice, if you believe that I am, with perfect esteem,  
Your Lordship's

most faithful and most obedient,  
humble Servant,

DUN: FORBES.

*Lord Chancellor to the Lord President of the Court of Session*

[H. 98, f. 4; *Culloden Papers*, 139.]

CARSHALTON, Jan. 6, 1738.

MY LORD,

Your obliging letter found me at this place rustivating for a few days, in order to be the better fortified against a session of Parliament. It gave me much pleasure, as it brought proofs of my not being forgotten by an old friend, whom I most highly esteem; and something the more as it flatter'd my vanity a little in making me believe that I was not altogether mistaken in part of those considerations, which you permitted me to lay before you. Your Lordship perceives from hence that I can sometimes be on the same side as a Scotch mob. *Interdum populus rectum videt*; and in this instance I think them right, when they found themselves on your talents and perseverance, and the probable consequences of a good beginning. Reformation is most difficult at first; but when some advances are happily made, the effects being felt, afford a sensible evidence, which operates more strongly than any previous speculation and must create a shame of relapsing.

I rejoice much to hear that your Lordship hath turn'd your thoughts towards the improvement of the laws of your country. Such hands as yours are fitted for such undertakings; whereas others, not so well-inform'd or not so well intentioned, often spoil what they pretend to amend. If a scheme of this nature were sent up, you might depend on my best endeavours for your service; for

<sup>1</sup> The Bill inflicting penalties on the city for the murder of Captain Porteous.

<sup>2</sup> Queen Caroline died November 20, 1737.

however I may of late have been thought of<sup>1</sup>, I assure you, with the strictest truth, that there is not a man in the United Kingdom who considers it as *one*, more than I do, and upon that principle would more zealously promote the true interest and welfare of Scotland. But as to the Bill passing *without alterations*, your Lordship, who [has] had long experience of our Parliament's genius, of the disposition to amend the English law, and of some attempts relating to your own, can judge, as well as I, of the probability of such an event. It would be impertinent to put you in mind of another matter—that unless some of your countrymen here are taken in to the original project, many obstacles may arise.

The recovery of your people from their ferment about the Edinburgh Bill is a good symptom. I hope they also are, or soon will be, so from that about reading the other Act of Parliament in the churches<sup>2</sup>; for whatever becomes of your law, your ecclesiastical affairs are too sacred for me to meddle with. As to those of your manufactures, they have my best wishes, and shall never want any assistance in my power.

I hope the becoming concern, which you say shews itself in your part of the kingdom on the Queen's death, may be looked on as an evidence of their affection to the King, his family and government. As the blessing we enjoyed in her life was public and universal, the misfortune of her loss must be equally extensive,...

I hope Mr Rosse remembered to return my hearty thanks and compliments for your kind present, which did credit to your fishery.

*President of the Court of Session to the Lord Chancellor*

[H. 98, f. 6.]

EDINBURGH, July 3, 1739.

MY LORD,

Had you been considering for a year together in what way to gladden the heart of an old acquaintance, you could not have done it more effectually, than you have done, by the letter you did me the honour to write to me of the 26th June<sup>3</sup>. It is a great cordial for a man like me, removed from the commerce of the world, to be thought of with kindness by the person, whom of all others he thought of, as the pattern, and wished to be the approver, of his actions....

I do not in the least doubt that your Lordship would hear with satisfaction the reports that are favourable to the Court to which I

<sup>1</sup> See vol. i. 183.

<sup>2</sup> Whereby the Scottish ministers were obliged to read once a month in their churches a proclamation urging the congregation to bring Porteous's murderers to justice.

<sup>3</sup> Not extant.



belong. It is no wonder your Lordship should hear with pleasure the accomplishment of your own predictions, and that a person, who by your advice and instigation accepted of an employment, discharges his duty to the best of his ability and understanding. The truth of the matter is the Court is in many respects mended. If I have any hand in it, it is by copying, as well as I can, a person whom I freely quote to all the world, but must not mention to your Lordship. But we are not so mended as some report. The men are almost all the same as formerly; bad habits and evil maxims are hardly to be rooted out, and to tell your Lordship the truth, I begin to despair that in the time that I have in my own mind proposed for my service, the mischief can be cur'd, and your Lordship will readily agree with me that, if any vacancies that may hereafter happen (I write this without any particular view, because we are all at present in good health) are not properly filled up, the case will grow desperate; and then I shall think myself at liberty to quit, even before the period that I had hypothetically settled for that purpose. However, at present I go on just as you would have me, that is, just as you would do, if you were condemned to the oar I tug at....

No man living is more affectionately than myself

Your most faithful...

DUN: FORBES.

[On the 7th of August 1739 (H. 98, f. 8; *Culloden Papers*, 151), the President of the Court of Session writes to the Chancellor on the subject of an order, made by the House of Lords on the Lords of Session in Scotland, to make a roll of the peers of Scotland existing at the time of the Union, with their limitations. He declares the impossibility of carrying out such an order on account of the confusion of the records<sup>1</sup>, and the absence of the necessary powers to compel the exhibition of titles, and adds:] But what I chiefly presume to give you trouble on, is a matter merely of form which alarms some of us, and in which I, as your old friend Duncan Forbes, and not as President of the Court, beg your advice. We are, you must know, when we are seated, very high and mighty. Our Sovereigns ever since the Union of the Crowns, when they had any commands for us, did us the honour to write to us; and some of us imagine that, when the House of Lords are pleased to make any order upon us (otherways than in the ordinary course of judgment on appeals), it ought to be notified to us and transmitted in some way different from what on this occasion has been followed—a letter from the assistant Clerk....

[The Chancellor, on August 18 (H. 98, f. 10), owns that he had foreseen difficulties in carrying out the order, which had

<sup>1</sup> See also J. H. Burton, *Life of Forbes*, 363; H. 238, f. 218, and above, vol. i. pp. 184, 592.

been occasioned by the claim of "a very mean person to a Scotch peerage," and that he had for this reason inserted the phrase "so far as the Lords of Session shall be able," and so stated the question from the Woolsack. As to the method of transmitting it, he holds out little hope of satisfying the Scottish aspirations.] The House of Lords [he much suspects] will never suffer it to be insisted on that any person or body of men have a right to have the orders of the House of Lords communicated by letter from the Speaker, unless it be their own members or the Lords Lieutenant or Lords Justices of Ireland, who are entrusted with royal powers. [He himself, as Speaker, had no power to send the order, unless specially commanded by the House; but in everything, which he now wrote, he begged that his name might not be mentioned or committed.] On any other terms, it would be highly improper for your Lordship and me to correspond about points of form between the House of Lords and the Court of Session, out of our respective seats. [At the same time, he expresses his willingness to return the answer of the Lords of Session himself to the House.

The President discusses the subject further on August 31 (f. 13), and the Chancellor replies again, after an interval, on September 27<sup>1</sup>.]

*Robert Jocelyn<sup>2</sup>, Attorney-General of Ireland, to the Lord Chancellor*

[H. 238, f. 182.]

DUBLIN, 5 Sep., 1739.

MY LORD,

I received yesterday the honour of your Lordship's letter of the 28<sup>th</sup> ult<sup>o</sup>, and the same packet boat brought over his Majesty's commands to appoint me Chancellor.

I want words to express the real sentiments of gratitude which I now do, and ever shall, feel for the unusual friendship and zeal with which you have been pleas'd to espouse my promotion.

At first, I thought it impossible for your Lordship to have added to so great an obligation; and yet you have much increased the debt; your kind advice has something so good in it and is so useful to me, that at the same time I thank your Lordship for it in the most sincere manner, I engage my credit with your Lordship to follow it most religiously.

...As I enjoy the benefit of your patronage, let me have the happiness of your protection; on my part it shall be the study of my life, not to dishonour your recommendation....

I am with the greatest truth and respect,...

ROBERT JOCELYN<sup>3</sup>.

<sup>1</sup> Below.

<sup>2</sup> See vol. i. 54.

<sup>3</sup> Also ff. 170, 174. Further a letter from him, March 29, 1741, to H. on the state of Ireland (H. 238, f. 335).

*Lord Chancellor to the Lord President of the Court of Session*[H. 98, f. 16; *Culloden Papers*, 153.]CARSHALTON, *Sep.* 27, 1739.

MY LORD,

I receiv'd the honour of your Lordship's letter of the 31st of August, which should have been sooner acknowledged, if I had not been making use of the leisure of this short vacation in moving about from one place to another. Your Lordship's notion of the propriety of avoiding such disputes, as that now under consideration, is perfectly agreeable to your usual prudence and candour....

As to the right of the case, I will own, with great freedom, that I think no point of right is concern'd in it, and am not able to add anything to what I took the liberty to offer to your Lordship's consideration in my former letter, especially being at present in the country at a distance. (I thank God) from all journals and books of that nature. But as to the difference (whereon your brethren seem to found themselves) between the Courts of England and your Court, in respect of the presumption that the English judges are always present in the House of Lords, it seems to be far from being decisive in this case<sup>1</sup>. Thus much is certain, that the English judges are called by writ and have a right to be there; but it is settled by constant and ancient practice that only two of them attend daily by rotation, and the House frequently makes orders for the attendance of all the judges, sometimes of the judges of one particular Court, and sometimes of such as are not gone the circuits. Those orders are never signified by the Lord on the Woolsack, but always delivered by the lowest officers of the House; tho' when an order is made on any particular Lord, who is absent, either to attend the House or for any other purpose, such order is always transmitted to him by letter from the Speaker. This shows that the non-transmission of the orders of the House by the Speaker to the English judges doth not arise from their being presumed to be present<sup>2</sup>; for so *a fortiori* are all the Peers, and yet orders, made upon them, are constantly so notified. If the supposition of the English judges being present is compared to the case of a

<sup>1</sup> The President had written "orders made by the Lords on the Judges of England require no notification, because the Judges either are, or are supposed to be, in the House; but that not being our case, some form of notification ought to be established." (H. 98, f. 8.)

<sup>2</sup> A contention put forward by the President (f. 13).

party in a cause depending, who after appearance is always supposed to be in Court, that also would not, according to our rules, afford any argument why the orders of the House should not be so notified to them<sup>1</sup>; for with us orders made in a cause must be serv'd either upon the party or his agent, before he is obliged to obey them, or can be subjected to the penalty of a contempt for not doing it, unless in some few special cases<sup>1</sup>.

Your Lordship is pleas'd to make a very polite acknowledgment of my offer to receive the answer of the Court, if sent up to me, and to deliver it to the House with my own hands. You may be assur'd that I shall never be wanting in my regard to so great and respectable a Judicature as the Court of Session, more especially whilst your Lordship presides at the head of it; and you are fully at liberty to acquaint your brethren that you are sure this will be done. But you must give me leave to say, that, as I propos'd this method by way of expedient to avoid disputes, so it must be understood to be on this condition that the answer contains no objection or insinuation touching the manner of notifying the order; for if it does, it must come in the common form.

It gave me much pleasure to observe that your letter was dated from a place of recess from business, where I heartily wish you the enjoyment of much pleasure and the perfect establishment of your health, for the happiness of your country and of all your friends, amongst whom I beg you will always number,

My Lord,

Your Lordship's most obedient, and most

faithful, humble Servant,

HARDWICKE.

[The President forwards to the Chancellor the return made by the Lords of Session to the order of the House of Lords on February 27, 1740 (f. 18 and *Culloden Papers*, p. 155), and for further correspondence *Ib.* pp. 157 sqq. and 199.]

<sup>1</sup> *I.e.* the orders of the Court are *not* binding on him "without any personal intimation," as contended by President Forbes (f. 14).

*Lord Chancellor to the Lord President of the Court of Session*[*Culloden Papers*, 158.]

CARSHALTON, April 5, 1740.

MY LORD,

I am just got to this place, quite fatigued and worn out by the attendance of two causes from your Court: *Cunningham against Chalmers* and the *Earl of Selkirk against Duke Hamilton*<sup>1</sup>. But tho' I sensibly feel the labour of going through them, yet I conceive great pleasure in the different degree of weight and credit with which your decrees come now before the House from what they did a few years ago<sup>2</sup>, an alteration which I presaged would happen, and do most sincerely congratulate your Lordship upon the event.

[He asks for the President's own opinion regarding a point in the last case, in which the House of Lords had differed from the Scottish Court.]

*Richard Michell<sup>3</sup> to the Lord Chancellor*

[H. 238, f. 347.]

BLOOMSBURY SQUARE, April 8, 1741.

MY LORD,

May it please your Lordship graciously to pardon the presumption of a son in humbly begging leave to represent the fatal consequences that are likely to attend the unhappy condition of his father, who has had the misfortune to fall under your Lordship's displeasure.

[The whole family has been made ill by the shock.] This together with my father's and mother's great age and other infirmities, and their present unwholesome confinement (where several die daily), gives great reason to fear they cannot long support themselves under such accumulated miseries.

These circumstances will, I most humbly hope, induce your Lordship to extend your mercy and compassion in such a manner as to your own wisdom and justice shall seem meet, and to suffer my father to have a sight of his son, before it may be too late.

Permit me to subscribe myself, with the greatest submission,

Your Lordship's most obedient and most humble Servant,

RI. MICHELL.

[The Chancellor released the offender from confinement shortly after receiving this application. The latter returns his thanks for the Chancellor's clemency on April 27 (H. 238, f. 352), and endeavours to excuse his conduct on the plea of ignorance.]

<sup>1</sup> H. 806, ff. 43 and 57.

<sup>2</sup> *I.e.* before the appointment of the President to his present office.

<sup>3</sup> Above, p. 470.

*Lord Chancellor to Sir Robert Walpole, K.G.*

[H. 239, f. 10.]

POWIS HOUSE, Jan. 13, 1742, at night.

SIR,

I was at your door in expectation of the meeting, which was appointed on Monday for this night. Tho' that did not hold, I would (if you had not been engaged) have made use of the opportunity of speaking to you further on the subject of the vacant judge. The more I consider that affair, the more uneasy I am at the situation in which it will unavoidably be, if a different resolution be not taken; and I cannot but hope that the reasons, which I laid before you in our last conversation, will upon reflection appear to yourself to have more weight than you were then willing to allow them. It is my firm persuasion that the keeping this place open will be so far from having any good effect, that it will be productive of many ill ones; and may at last create what may be looked upon as a necessity of throwing it into such hands as neither you nor I should wish it to fall into. The term begins on Saturday sev'nnight, (the 23<sup>d</sup>), and ends on the 12<sup>th</sup> of February. The making any person a serjeant takes up many days and can only be done in term-time; so that, if this promotion be not then completed, it cannot be before the Circuits. The expedient you are pleased to propose was that a serjeant should supply the place. I will not trouble you with repeating what I then said of the impropriety of such a proceeding in the case, when a judge's place has been vacant for a considerable time. An additional consideration occurs upon this head. My Lord Ch. Baron's health has lately taken such a turn that he is likely to continue for some time, and yet is entirely unfit for business, so that a serjeant must go in his room<sup>1</sup>. Mr Justice Fortescue-Aland<sup>2</sup> is absolutely unable to go a Circuit, and on that account a serjeant was appointed to officiate for him, even in the summer season; and if another serjeant shall also be sent, three serjeants will be to go the next Circuit instead of the regular judges; and one of them is the vacant place of a judge, which ought to have been filled up. I verily believe that no instance of this kind was ever known, and should be extremely sorry to see one happen. I know your thoughts are much taken up with

<sup>1</sup> Sir Edmund Probyn, Lord Chief Baron of the Exchequer, 1740, b. 1678, and died this year, 1742.

<sup>2</sup> Sir John Fortescue-Aland (1670-1746), descendant of the famous Chief Justice of Henry VI; Justice of the Common Pleas; resigned 1746, when he was created Baron Fortescue of Credan in the peerage of Ireland and died the same year; author of *Reports*.

greater considerations<sup>1</sup>; and yet this is a point which concerns the administration of justice and the reputation of the government. In that respect it is of no small importance. Many corporation causes<sup>2</sup> are now depending, several of which will probably come to be tried in the next Circuits; and if three serjeants, who are generally understood (when employed on such occasions) to be candidates for judges' places, should be sent, it would be liable to misconstruction. I beg you would afford a few moments to think of this affair. It makes me uneasy to give you this interruption, and yet I cannot help it; because I can never give my consent to a step, which appears to me to be highly improper<sup>3</sup>.

...I am [etc.]

H[ARDWICKE].

*Lord Chancellor to Henry Home, Lord Kames*<sup>4</sup>

[Lord Kames, *Elucidations*, 381<sup>5</sup>.]

POWIS HOUSE, July 12, 1751.

...That you should conceive some dissatisfaction at the judgment of the House of Lords in the case of *Gordon of Park*, gives me no surprise<sup>6</sup>. Notwithstanding the part I had in that decision, and my thorough conviction of the justice of it, founded upon the most mature deliberation, I always feared that it would be of difficult digestion with the professors of the law of Scotland. But I cannot sufficiently admire and applaud your great candour in so readily owning a conversion, which does much honour to that judgment and will, I doubt not, have great weight in removing such doubts as may remain with any of your brethren. [Encloses a copy of Lord Chief Baron Parker's argument and of the order of the Lords, for his correspondent's information.] I found some difficulty in stating my question, so as to avoid making the English judges judges of the Scotch law (which would have been highly improper), and simply to refer to them the main point arising from the construction of the act 7 Annæ<sup>7</sup>. For this reason, I was forced to frame the question hypothetically, and to insert two suppositions

<sup>1</sup> Sir R.'s resignation took place on Feb. 3.

<sup>2</sup> *I.e.* causes in which the legality of the election of members of the municipal councils would be decided, which elections Sir R. Walpole was accused of manipulating.

<sup>3</sup> The remonstrance appears to have been unheeded, for no new judge was appointed till November of this year, after Sir R.'s retirement.

<sup>4</sup> See vol. i. 622.

<sup>5</sup> The letter is dated in error 1757.

<sup>6</sup> p. 482.

<sup>7</sup> The Act of Union.

of points merely of your law, reserved for the determination of the House, and which were determined by the opinion of the Lords, given in the debate, after the judges had been heard. All the Lords concurred that, by the law of Scotland, an estate-tailzie, with prohibitive, irritant and resolute clauses, is an estate of inheritance; and that by the same law no estate or interest in the lands was vested in Sir William Gordon by virtue of the limitation in the settlement of 19<sup>th</sup> October, 1713, to the heirs-male of the body of Sir James Gordon, though that would have been clearly otherwise by the rules of the law of England.

Your discernment has already shown you that by this method, the question put to the English judges was reduced, purely and simply, to the construction of a statute of the Parliament of Great Britain, which it is equally the office of the King's courts in both parts of the United Kingdom to expound; and everything that could make a point in the Scotch law, was kept apart for the decision of the Lords, the proper judges of it.

To repeat the several reasons of the judgment in the cause of Park, would swell my letter too much. But I will just fling out to you two or three ideas, which had weight with me, though they do not fully appear in the opinion of the judges.

1. My foundation was the express declaration of the legislature in the preamble of the act 7 Annae, which is the basis of the subsequent enacting clause, "That nothing can more conduce to the improving the union of the two kingdoms, than that the laws of both parts of Great Britain should agree *as near as may be*, especially those laws which relate to high treason and the proceedings thereupon, as to the nature of the crime, the method of proceeding and trial, *and also the forfeitures and punishment for that offence*, which are of the greatest concern both to the Crown and to the subjects."

2. The enacting clause, relative to this subject, is penned in words still more general; and therefore the question must be a question of construction and exposition, wherein, though the proviso immediately following cannot extend, or superadd to, the enacting clause, it must be allowed to explain and illustrate the meaning of the words.

3. That judges are obliged to make that construction, which will best attain the declared intent of the legislators, provided the words of the law will bear it; and therefore that such a construction, as would produce the greatest equality between England and Scotland in forfeitures for treason, must be the true construction.



4. In this I felt the force of the difficulty arising from the difference between the nature of your strict Scotch tailzies with substitutions, and our English entails with remainders over, which you have so clearly explained, viz: that in the former every person called to the succession is considered as an heir, and has the fee in him; in the latter, the fee or estate in the land is broken and divided into distinct parts. But then I considered what was to be allowed as the consequence of this diversity between the two laws. Was a tenant in tail, although admitted to have an estate of inheritance descendable to his issue, to forfeit only for his life? Or was every tenant in tail, by reason of being invested in the ideal fee, to forfeit not only for himself and his issue, but also for all the substitutes?

Either of these would plainly destroy the equality in forfeitures, professed to be established by the legislature, and not only contradict the intent of the act, but also the express words of the preamble.

The knot lay here:—To avoid forfeiting the whole fee; for as your law places that fee in every tenant in tail, and don't admit of a division of it into particular estates and remainders, there was more colour from legal reasoning to carry it *to that large extent*, than to make a man, who had a fee in him, to forfeit for his life only.

But I could not satisfy my own mind that this *large extent* was either agreeable to the intention of the legislature, or a just and equitable measure between the two nations.

5. But how was this to be avoided? By expounding the act by *analogy*; and if you will apply your usual penetration to this point, you will find, that there is often no other possible way of making a consistent sensible construction upon statutes conceived in *general words*, which are to have their operation upon the respective laws of two countries, the rules and forms of which are different.

These general words will probably always be taken from the language or style of one of these countries more than from the other, and not correspond equally with the genius or terms of both laws. You must then, as in other sciences, reason by *analogy*, or leave at least one half of the statute without effect.

This head of argument from *analogy* is not unknown in the law of England. It was long since established upon the statute *De donis conditionalibus*, 13 Ed: I, which enacts, that a fine levied by a tenant in tail shall be *ipso jure nullus*. Stronger words could not be found, in the concise words of those ancient laws, to render such a fine an absolute nullity. But what said the judges, when they

came to construe this act? They said, it should be construed by the reason of the common law (*i.e.* by *analogy* to that law)....

There are other instances of the like nature in our law. But I am aware that to these it may be objected, that it was reasoning by *analogy* from one part of the law of England to another part of the law of the same country, which is not the present case. I think that doth not weaken the weight of the example, but I will put a nearer case. In our English courts wills have frequently come in question, either made by foreigners or in parts beyond the seas, relating to property proper in England, and expressed in the language and terms of the law of some foreign country. In construing such wills, the constant method has been, first, to inquire and settle what would be the operation and effect of these terms according to the law of that country from which the terms are taken, and then to allow them the like effect here, as near as the law of England will admit. It has seldom happened that this could be done precisely and specifically. Some such difference has often appeared, as exists in the present case between our remainders and your substitutions; but the Court has always allowed these terms their force and effect, as near as might be, in support of right, *ut res magis valeat quam pereat*.

The rules of construction upon Acts of Parliament are in many respects the same with those upon wills; and by the construction made in the case of *Park*, the words of the preamble of the act 7 Annæ, which is the key to the meaning of the legislators, are strictly complied with, viz: "that the laws of both parts of Great Britain should (*as to forfeitures for treason*) agree as near as may be." And the world must allow that the favourable side for Scotland was chosen.

But though by this decision the like force is given to such substitutions in your tailzies as to English remainders, yet...you express yourself with strict propriety when you say that *by this judgment a remainder is introduced into our law with respect to forfeiture only*.

As to the general mischief of your strict entails, and the evil consequences of locking up the land of a country *extra commercium*, I have long been convinced of them, and rejoice to find a person of your knowledge and experience in the law and constitution of Scotland in the same way of thinking. It gives me the better hopes that it will not be long before some proper remedy is applied<sup>1</sup>...

<sup>1</sup> Cf. vol. i. 623.

*Thomas Cannon<sup>1</sup> to the Lord Chancellor*

[H. 243, f. 226.]

TOULOUSE, Aug. 21, 1751.

MY LORD,

As to our common Redeemer we owe our hope of an Hereafter, and life must close to the glorious York even as to the infamous Cannon, I beg your Lordship to hear a few words. I had not fled from justice but at the entreaty of an unhappy, aged mother, who could not see me carried to prison and removed for further punishment in a languishing state of health, for I have laboured under a severe hysteric disorder above 11 years. Since my flight, perpetually afflicted with a nervous headache and my inveterate lowness of spirits, become more terrible by the uncertainty of subsistence, I have suffered a continuance of agony experience alone could shew man can live in. But the intense woe has not been without profit; for when the world yielded no support I sought God and wept my transgression. In consequence of this, fervent is my desire to make atonement which must be by the pen that has offended. Wherefore I often sit down to write, but my melancholy situation quite defeats me; for the thought of infirm relations, whose ailing or dying moments I may not attend, unbends my mind and I sink into spiritless tears. There is nought for me but to fall at the feet of one, who may pity and, as your Lordship can, relieve. My petition is not for the recognisance to be cancelled but suspended only, that any misbehaviour of mine may be speedily punished. If my Lord in his goodness takes compassion on me, he will order to be written to Mrs Cannon in Fish Street, Windsor, the reviving words, your son may return; that poor mother with her reformed son shall pray the Power of Powers to hear York, as the great York has heard the cry of the most ruined of men. I am, my Lord, your Lordship's most devoted servant,

T. CANNON.

My Lord, a gentleman of the Law having acquainted me your Lordship expressed great abhorrence of my book, I thought it could not be improper to tell you, there is not now in the world a monster capable of vindicating that most execrable performance. If I have done wrong, good my Lord, forgive me.

<sup>1</sup> Thomas Cannon, younger son of Robert Cannon, dean of Lincoln, had published a tract "containing the most detestable principles of impurity, not fit even to be remembered in the title," of which the name even is unknown and of which no copy appears to exist. He was imprisoned in consequence, and allowed out on bail, which however he broke and fled to France. His appeal to the Chancellor appears to have had no effect, for after returning home he again fled abroad to avoid arrest. A subsequent petition for his pardon sent by his mother to the authorities some years later seems to have been granted. *Dict. of Nat. Biog.*; *Notes and Queries*, 2 Series, viii. 65.

*Earl of Bath to the Lord Chancellor*

[H. 243, f. 265.]

BATH, Nov. 22, 1751.

MY LORD,

I was most truly concerned when I read in the papers that your Lordship was forced by an indisposition to have your place supplied in the House of Lords, and no one more joyfully congratulates your recovery than myself. Permit me, my Lord, to take this occasion of your illness to lament a most certain truth, tho' you may imagine I mean nothing but a compliment.

I grieve to see that your great and worthy character, your known ability and integrity, your righteous decisions in all your decrees, must in time bring all the property of England out of its usual channel to be decided in the Court of Chancery, which may be of very dangerous and mischievous consequence to this country, whenever any judge presides there with less ability, less integrity, less honour and less justice than yourself, which I am afraid must be the case of perhaps all your successors. I beg your Lordship would not trouble yourself to send any answer to this letter because I shall have the honour to wait on you in the House of Lords sooner than any letter can get to me. I am with the greatest truth and respect, your Lordship's

most humble and obedient servant,

BATH<sup>1</sup>.

*Lord Chancellor to Robert Dundas, Lord President of the Court of Session in Scotland*

[H. 100, f. 246.]

POWIS HOUSE, April 1, 1755.

...Upon that [Bill] about bankrupts your Lordship very justly observes that the principal mischief is the inequality occasioned, as the law now stands, in the distribution of effects amongst the creditors. I don't at all wonder that, upon consideration, your Lordship should not approve of adopting the modern scheme of our laws relating to bankrupts into the law of Scotland. They are a great fund of profits to several officers belonging to the Great Seal; but I am firmly persuaded that they are the greatest source of fraud and perjury, that ever took its rise from the established law of any country. I had seen so much of this in my experience at the Bar that, when I was Attorney General, I opposed our last Act concerning bankrupts, viz: 5th of his present Majesty, in the House of Commons<sup>2</sup>...

<sup>1</sup> See above, p. 220.

<sup>2</sup> See also letters printed *Hist. MSS. Comm.*, iii. Rep. app. 415.

*Lord Chancellor to the Duke of Marlborough*[MSS at Wimpole.] POWIS HOUSE, *July 12, 1755.* Saturday, 11 at night.

MY LORD,

I am extremely concerned to be obliged to give your Grace this trouble upon an affair which came to my knowledge but this evening, and has given me much uneasiness. I was informed that Mr Turton, who is under an indictment for murder, is one of the new list of Justices, inserted in the Commission of the Peace for the County of Oxford, which lately passed, and that this was commonly talked in the town. When I was told it, I really could not believe it, as it never had been mentioned to me, so as to leave it to my consideration....I must therefore beg and insist with your Grace that the Commission be forthwith sent up to me by the bearer (who is the messenger to the Great Seal) that I may raze out this name and reseal the Commission, after which it shall be sent back so as to be at Oxford before it will be wanted. If the Commission is not sent up, I shall be obliged to seal a special *Supersedeas* to remove Mr Turton from the office, which will occasion more strife than the method before proposed. Your Grace knows that one of the first things done at the Assizes is opening a new Commission of Peace, and calling over the names of the Justices. How improper will it appear in the sense of the County, and really be in itself, that this gentleman's name should be called over as a Justice, now newly appointed, and immediately after taken to be arraigned for murder. I therefore...depend upon receiving back the Commission by this messenger, who will go for it to such place as your Grace shall direct, if it should not be in your Grace's hands, and may be in Town with it tomorrow night, or early on Monday morning,

I am, with the greatest respect, [&amp;c.,]

[HARDWICKE].

[On July 13, the Duke of Marlborough replies with apologies for his carelessness.]

*A Gentleman to the Hon. Charles Yorke*

[H. 286, f. 138.]

Sunday, *April 13, 1755.*

A Gentleman is very much concerned at a mistake he was guilty of the other day, and hopes you will be so good to acquaint Lord Chancellor with it and the uneasiness he has been under,

tho' seemingly a trifle; as nothing would concern him more than the bare possibility of his Lordship's entertaining a thought that the Gentleman could be capable of any kind of impertinence, or misbehaviour, to his Lordship.

Friday morning last, or rather about one or two o'clock, the Gentleman was walking by Charing Cross and seeing all at once a State Coach coming along very near him, the Gentleman made a bow in a kind of familiar manner to the person he apprehended was in it, and I believe made a little offer to kiss his hand. As soon as the Coach was passed there appeared a second with a Coronet on it, and the Gentleman knew it and the people in it, and found his error; for he actually took my Lord Chancellor's for the Speaker's Coach, and from the long acquaintance and friendship he has had with the Speaker and not having seen him a great while, the Gentleman ventured to make a familiar bow to the Speaker, but was exceedingly shocked to find it was his Lordship's.—If the Gentleman was not known, he is very happy; if he was, he is very much otherwise, to think in what a light he appeared to his Lordship; and indeed, the Gentleman, who has sat in the House, might have known that it was neither the time of day nor the place to meet the Speaker. But so it happened; and if you will be so kind to excuse this blunder to my Lord, if he already knows who it was, you will oblige very much one who hopes you don't know him, and indeed he is almost ashamed to write his name on this occasion, a thing which he never was afraid to do before, and hopes he never shall again. He is, however, very much your humble servant<sup>1</sup>.

*Lady Ranelagh to the Lord Chancellor*

[H. 245, f. 238.]

[endorsed by the latter] received at Wimpole by  
special messenger, Aug. 31, 1755.

DENE, Saturday, two o'clock.

MY LORD,

I hope your Lord<sup>sh</sup> will pardon me for the application I am agoing to make to you, which is to beg your assistance in regard to Lord Pomfret's behaviour<sup>2</sup>, he has for some time made strong application to me, I have always refused his address's. Yesterday morn he came to my House, and make strong atempts

<sup>1</sup> Lord Egmont or Sir George Oxenden are suggested as the writer by the second Lord Hardwicke. It is doubtless the latter, the letter being sealed with his arms.

<sup>2</sup> George, second Earl of Pomfret, 1722-1785; married 1764 Anna Maria Draycott, a great heiress.

to be lett in, Sr John Elwill was with me which his Lord<sup>sp</sup> found out and sent him a challeng<sup>1</sup>, Sr John appointed an Hour to meet him this morn, but as his Lord<sup>sp</sup> did not come at that hour Sr John came here to inquire how I did after my fright yesterday, when he has received a message from him to lett him know he waits for him, I have with the utmost difficulty kept Sr John here and sent a Brother [and] Sister to Lord Po: to acquaint him I shud apply to your Lord<sup>sp</sup> for redress. Your Lord<sup>sp</sup> will easily amagine the horrors of my mind, to have a person's life in danger for no other reason but because Lord Pomfret found out he was in my House which woud have been the same case with any other unmarried man he had heard had been in my House, and I am so great a prisoner my self that I dare not stir out in my Garden for fear I should meet him, as your Lord<sup>sp</sup> has always been famous for justice and mercy I shall flatter my self I shall receive redress and hope that your assistance will come time enough to preserve the life of a man who is intirely inocente of any thing but being in my House, having not the least acquaintance with Lord Pomfret.

I am, my Lord your Lord<sup>sps</sup>

most obedient humble servant

S. RANELAGH.

I must ask a thousand pardons for the confution this is writ in but I am so flurred in my spirits and my hand trembles so I cant writ it over again.

[The Chancellor answers (f. 240) that he has no authority, but instructs Lady Ranelagh to apply to the neighbouring justices of the peace or the Lord Chief Justice, and advises her immediately to consult her relations.]

*To the Right Hon. the Earl of Hardwick Lord High Chancellor of England, in Great Ormond Street, London*

[H. 246, f. 83.]

LONDON, June 26th, 1756.

MY LORD,

If you can procure a place for a Gentleman which will bring in from five hundred pounds per annum to fifteen hundred per annum your Lordship shall receive a very large gratuity proportioned to the income of the Place you will procure; or if you should prefer an annuity for your Life instead of a sum at once, your Lordship shall be satisfied. The Places which would be most agreeable are that of Garter King at Arms (which if you will procure him for his life you shall receive five hundred pound per annum for your life and one thousand pounds besides), and if not that then

<sup>1</sup> Selina, widow and second wife of Baron Ranelagh, who died October 5, 1754. She married Sir J. Elwill, Bart., November 30, 1755.

some sinecure place in the Law. Your Lordship will be so kind as to direct to A: G: Z: at M<sup>rs</sup> Young's, the West-India Coffee-House, near the Exchange, Bristol. Be so kind as to answer this immediately that the Gentleman may know what to resolve upon.

*Lord Mansfield, Lord Chief Justice, to the Earl of Hardwicke*

[H. 247, f. 312.]

Dec: 10, 1758.

MY DEAR LORD,

I am extremely obliged to your Lordship for your goodness in favouring me with a sight of the inclosed. Your Lordship's reasoning in that case, put the general law of property (tho', thro' the form of conveyance or nature of relief, the jurisdiction was changed from a court of law to a court of equity) upon so consistent a foundation, free from every mischief which sprung from the narrow plan applied to Uses, that I have ever since formed from it a system to myself. I was very desirous, for my own satisfaction, to see how far my memory and notes were correct. I beg leave to return it with many thanks, and to assure your Lordship that I am with the greatest respect

Your most aff: and devoted hu: Serv<sup>t</sup>

MANSFIELD.

*Earl of Hardwicke to Henry Home, Lord Kames*

[*Memoirs of Lord Kames*, i. 329.] GROSVENOR SQUARE, June 30, 1759.

MY LORD,

It has happened to me again, as it did in the former instance of our correspondence<sup>1</sup>, that I have not been able to acknowledge, as I ought, your Lordship's obliging communication of the Introduction to the Treatise upon Equity, till the session was over. I ought indeed to be one of the men of leisure; but it generally falls out, whilst the Parliament is sitting, that business enough is cut out for me. As your performance is the fruit of deep consideration, the respect of consideration and attention was due to it; and the honour you do me by calling for my thoughts, gives you a right to demand it. I have read over your papers more than once with care, and not without much approbation of the ingenuity and industry of your researches and reflections. The field is wide, and to range the whole is beyond my strength; but I will beat a piece of ground here and there, to try if I can start anything that may be worth your Lordship's pursuing.

<sup>1</sup> See vol. i. 623.



Your Lordship has treated very properly upon the rise of the jurisdiction of equity in England; a topic of much controversy and hitherto unsettled. The general idea which you have flung out concerning it, appears to me to be very judicious and that, in the original formation and division of courts, causes of an extraordinary nature, to be determined, not by stated rules of law, but by an arbitrary, though sound discretion, were reserved to the Sovereign and his Council. It was natural that it should be so; for as all power of judicature was derived from the Crown, so much as *that* did not grant out or commit to others, must remain there; with this difference, that some have been of opinion, that it was reserved to the King in his great Council, that is the Parliament.

It is now many years ago that I read over a manuscript treatise of one of our most able lawyers and antiquarians, my Lord C. J. Hale, concerning *Jurisdiction*, from which I transcribed some passages on this subject in his own words. The great character of the author may give your Lordship a curiosity to see them.

In one part he has these words:—"Touching the equitable jurisdiction (in Chancery), though in ancient times no such thing was known, yet it hath now so long obtained, and is so fitted to the disposal of lands and goods, that it must not be shaken, though in many things fit to be bounded and reformed. Two things might possibly give it original, or at least much contribute to its enlargement. 1<sup>mo</sup> The general committing of particular petitions in Parliament, not there determined, unto the determination of the Chancellor, which was as frequent as to the Council; and such a foundation being laid for a jurisdiction, it was not difficult for it to acquire more. 2<sup>do</sup> By the invention of uses (*i.e.* trusts), which were frequent and necessary, especially in the times of dissension, touching the Crown. In these proceedings, the Chancellor took himself to be the only dispenser of the King's conscience, and possibly the Council was not called either as assistants or co-judges."

There seems to have been a natural reason how this jurisdiction, arising originally from such references, came to be devolved into the hands of the Lord Chancellor, rather than of any other branch or member of the Council. The Chancery is with us the grand *Officina Justitiæ*, out of which all original writs (*briefes* as they are called in Scotland), issue under the Great Seal, returnable in the courts of common law to found proceedings in actions, competent to the common law jurisdiction. The Chancellor, therefore, was the most proper judge, whether upon any petition so referred, such

a writ could be framed and issued by him, as might furnish an adequate relief to the party, and if he found the common law remedies deficient, he might proceed according to the extraordinary power committed to him by the reference, *Ne curia regis deficeret in justitia exhibenda*. I don't know whether a certain law-book, published here not long ago, has reached Scotland, I mean the *Reports* of Sir John Strange, late Master of the Rolls. If it has, your Lordship will find, in the first volume, an argument of mine, in a remarkable cause of Sir Robert Walpole's, which passes under the name of *The King* against *Hare and Man*. It was made when I was a very young advocate, before I was Solicitor-General, but it is correctly reported; for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own. In arguing that cause, which turned upon a critical exception to the return of a writ of *scire facias* in Chancery, I found, or at least fancied, it to be necessary to show that all the various powers of that Court were derived from, or had relation to, the Great Seal; and as I had not then seen my Lord Hale's manuscript, endeavoured to prove, that the equitable jurisdiction exercised by the Chancellor, took its rise from his being the proper officer to whom all applications were made for writs or *briefes*, to ground actions at common law; and from many cases being brought before him, in which that law would not afford a remedy, and thereby being induced, through necessity or compassion, to extend a discretionary one<sup>1</sup>.

If this account of the original of the jurisdiction in equity in England be historically true, it will at least hint one answer to the question, how the Forum of common law and the Forum of equity came to be separated with us? It was stopt at the source, and in the first instance; for if the case appeared to the Chancellor to be merely of equity, he issued no original writ, without which the common law could not proceed in the cause, but retained the cognizance of it to himself.

Whether the jurisdiction of common law and equity ought to be committed to the same, or to different courts, is a question of another nature, and is very properly said by you to be no less intricate than important. It is a question of policy and legislation, depending upon general reasons of civil prudence and government. You have treated it with great modesty; and for my own part, I am fearful of being influenced by some prejudice or bias, contracted from long habit, and the usages of my own country. But

<sup>1</sup> p. 5, n. 2; and see above, vol. i. 63.

I must confess I have always been of the opinion, delivered by the great and sagacious author you have cited<sup>1</sup>, that to keep the two jurisdictions separate is the most eligible. I agree that, in considering this point upon different principles, there is room for different determinations. All the arguments drawn from the ease and convenience of the suitors, the preventing vexation and delay, and saving of expense, seem to conclude for uniting them in the same court. On the other hand, the arguments drawn from the necessity, or utility, of preserving the rules of law entire, and not leaving it in the power of judges to new-mould and vary those rules at discretion, by insensibly blending law and equity together, hold for keeping them divided. These reasons regard the constitution of the government, and have always appeared to me to outweigh the others; inasmuch as what is of general and public consequence, ought to be preferred to private or particular convenience. My Lord Bacon says, *Si fiat commixtio jurisdictionum, arbitrium tandem legem trahet*, and I think I have in some instances seen that effect produced. No wonder then, that a people jealous of their liberties, and fond of their laws, and therefore desirous to bind the hands of their judges by stated rules, should lean against so dangerous an institution. Besides the tendency it would have to make the judges of the common law law-makers in matters of property, I think, in time, it would have an effect of the like kind upon cases of crime, which affect life and liberty. In most countries the genius of the civil and criminal law is the same; and the rules, both of the one and of the other, are analogous. Arguments are often drawn from the rules in civil cases to influence the decision of criminal ones, where doubtful questions arise. Suppose then for a moment, that in such a mixed jurisdiction, the judges have let in certain principles of equity to become rules of law, though not originally founded in the common or statute law; suppose also, that in tract of time, the commencement of this change is forgot and lost; the points thus established will pass for original common law, and be argued from to govern decisions in criminal matters; in which the most obvious points that occur to the mind may be questions of evidence. If this had been allowed in England, I fear the common law would have sunk long ago, and everything been restored into the *arbitrium boni viri*.

The mention of this most liberal description of equitable jurisdiction, the *arbitrium boni viri*, puts me in mind to say a few words

<sup>1</sup> Lord Bacon, *De Aug. Scient.* lib. viii. c. 3, aphor. 45.

upon another question, very properly stated by you, "Whether a court of equity ought to be governed by any general rules?"

It is impossible to answer this question in a satisfactory manner without running into several distinctions.

Some general rules there ought to be, for otherwise the great inconvenience of *Jus vagum et incertum* will follow; and yet the Praetor must not be so absolutely and invariably bound by them, as the judges are by the rules of the common law; for if he were so bound, the consequence would follow which you so judiciously state, that he must sometimes pronounce decrees, "which would be materially unjust; since no rule can be equally just in the application to a whole class of cases, that are far from being the same in every circumstance."

This might lay a foundation for an equitable relief, even against decrees in equity, and create a kind of superfœtation of courts of equity....

In our courts of equity general rules are established, as far as it has been judged the nature of things would admit, especially since the time of my Lord Keeper Coventry, who was very able, and contributed a great deal towards modelling the Court of Chancery. In the construction of trusts, which are one great head of equity, the rules are pretty well ascertained. So they are in cases of redemption of mortgages, which makes another great branch of that business. But as to relief against frauds, no invariable rules can be established. Fraud is infinite, and were a court of equity once to lay down rules, how far they would go, and no farther, in extending their relief against it, or to define strictly the species or evidence of it, the jurisdiction would be cramped, and perpetually eluded by new schemes which the fertility of man's invention would contrive.

To this fertility of invention and luxuriant growth of fraud is owing the increase of causes in courts of equity, which has been observed in modern times; and not to that encroachment upon the common law, which my Lord Bacon, in his 43<sup>rd</sup> aphorism, calls an overflowing of the banks in praetorian courts. *Maxime omnium interest certitudinis legum, ne curiae praetoriae intumescant et exundent in tantum, ut praetextu rigoris legum mitigandi, etiam robur et nervos iis incidant, aut laxent, omnia trahendo ad arbitrium*<sup>1</sup>.

The judges who have presided in Chancery since the Revolution, have, for the most part, endeavoured with much anxiety to preserve

<sup>1</sup> *De Aug. Scient.* lib. viii. c. 3.

the boundaries of the two jurisdictions of common law and equity from being confounded; and have sent forth their injunctions to stop the course of the common law with a cautious and sparing hand. But new discoveries and inventions in commerce have given birth to new species of contracts, and these have been followed by new contrivances to break and elude them, for which the ancient simplicity of the common law had adapted no remedies; and from this cause, courts of equity, which admit of a greater latitude, have under the head, *adjuvandi vel supplendi juris civilis*, been obliged to accommodate the wants of mankind.

Another source of the increase of business in courts of equity, has been the multiplication and extension of trusts. New methods of settling and encumbering land-property have been suggested by the necessities, extravagance or real occasions of mankind. But what is more than this, new species of property have been introduced, particularly by the establishment of the public funds and various transferable stocks, that required to be modified and settled to answer the exigencies of families, to which the rules and methods of conveyancing, provided by the common law, would not ply or bend. Here the liberality of courts of equity has been found to step in and lend her aid.

I cannot put an end to this conversation with you, without taking notice of one point which is introduced *obiter*, and not essential to the plan of your work; I mean what is delivered concerning universal benevolence.

Nothing can be more just than the proposition laid down by you, "that the connexions which excite benevolence differ widely in degree, from the most remote to the most intimate, and that benevolence is excited in a just proportion to the degree of the connexion<sup>1</sup>."...However, I cannot help wishing that you would reconsider your conclusion, "that the doing good to one of our own species, merely as such, never is a duty." Mankind is one great family, derived from the same common parents. From hence arises a natural connexion; and people are too apt to neglect the obligation of doing good in practice, to want to be taught where it ceases in doctrine and precept. I know you have too much candour to be offended with the freedom of this observation. I am, with the greatest esteem, my Lord, your Lordship's most obedient, humble servant,

HARDWICKE.

<sup>1</sup> See *Memoirs*, ii. 344.

## CHAPTER XXVII

### FAMILY HISTORY 1754-1760

[H. 246, f. 367.]

Hardvici, gentis lux O! suprema togatae,  
Dulce decus patriae praesidiumque tuae;  
Sat populo regique datum; satis et tibi doctas  
Vexârunt aures proelia rauca fori:  
Nunc aliò vocat alma Salus; tu cede vocanti,  
(Haud fas est tantae temnere jussa Deae)  
Utque soles aliàs, mersus civilibus undis,  
Nunc vacuus patriae gratificare tuae.  
Nempe Deos omnes de te tria regna fatigant  
Sollicitâ, de te, nocte dieque prece.  
Nequa premant gravius tantarum pondera rerum,  
Neu, moles qui tot sustinet, ipse cadat.  
Cede ergo, fessumque animum furare labori,  
Sic vegetus posthac ad tua pensa redi.  
Nunc juga, nunc gelidos, Musarum habitacula, fontes,  
Nunc et Hamadryadum tempus adire domos.  
Quos coluit quondam secessus, ruris amator,  
Harleius, fato tu meliore colas.  
Hûc te Virgilius tuus, hûc invitat Homerus;  
Teque omni comitem carmine Flaccus emat.  
Quin et, qui doctas olim inflammabat Athenas;  
Quin et, divino Tullius ore, vocat....

LORD HARDWICKE'S great judicial work in Chancery being now terminated and the King's government happily settled, he withdrew to his family circle and to the green avenues and gardens at Wimpole. Shortly afterwards, moreover, he removed from his town residence at Powis House in Great Ormond Street, which he had inhabited during his chancellorship, to Grosvenor Square, where in the autumn of 1758 he purchased Lord Exeter's house, now No. 29, for £6300<sup>1</sup>.

His long tenure of office dated from a period before which few could carry back their memory, and he presented a strangely

<sup>1</sup> H. 4, f. 45.

unfamiliar figure in retirement. He had been called "Lord Chancellor" for 20 years, and even his name and title sounded new and unknown. "Lord Hardwicke," writes a correspondent of Miss Catherine Talbot<sup>1</sup>, "was much diverted with the King's looking at him, the first time he went to the Levee after giving up the Seal, and knowing him no more in a common coat and without the Chancellor's wig, than if he had never seen him. The Lord in Waiting observing this, told his Majesty '*Lord Hardwicke* was there'; but this was a name the King did not know the sound of and had no ideas annexed to, and only brought out the usual cold question of *How long had his Lordship been in town*. His Majesty was himself amused with the oddness of his mistake when he found it out, which was not till he had retired; and he afterwards told Lord Hardwicke, at the Drawing-Room, that having been used for above thirty years to see him in so different a dress—indeed, never having seen him out of it before,—he had not the least knowledge of him<sup>2</sup>."

"I believe the Lord Chancellor," writes Mrs Elizabeth Montagu, "will be greatly regretted by all who have any interests depending in his Courts. If he retires to his country seat,...I wish he would take me along with him....I never read of a great man in retirement but I wish to sit at his fireside, to hear him give his calm judgment on those things his more active powers of ambition made him acquainted with and of which the spectator judges ignorantly, the busy actor partially<sup>3</sup>."

Lord Hardwicke's retirement from his great office did not, however, bring his public career immediately to a close. He remained a principal member of the Cabinet, though without office, and continued to sign public documents. He retained his influence in the Closet, in the Council, and in Parliament and, as the chief author of the new administration, remained its chief supporter. "That incomparable man, my Father, though in no employment," wrote the second Lord Hardwicke, "had the full confidence and esteem of the Crown and of the better part of the nation<sup>4</sup>." He was consulted on all important points of public business both by Pitt and by the Duke of Newcastle, and employed his great personal influence in moderating their mutual jealousies and in

<sup>1</sup> See vol. i. p. 208.

<sup>2</sup> *Quarterly Review*, xxvii. 195, and see a similar account by J. Bentham in R. Cooksey's *Essays*, 62.

<sup>3</sup> *Letters* (1813), iv. 27.

<sup>4</sup> H. 80, f. 1.

maintaining the union and co-operation between them, so necessary in the national interests. "Your Father, though at Wimpole," writes the Duke of Newcastle to General Joseph Yorke, on September 5, 1760, "gives the tone to all we do, and is so good as to let me have freely and most ably his thoughts upon everything; and we generally, sooner or later, follow them<sup>1</sup>."

In the House of Lords, Horace Walpole complains that he still continued "to take the lead very dictatorially<sup>2</sup>." Nor were his judicial functions completely relinquished; for he took a chief part, as he had before, in prize appeals and causes before the Privy Council and especially in peerage and appeal cases in the House of Lords<sup>3</sup>, which last, at this time, partly owing to the inexperience of Sir Robert Henley, who at first sat as Lord Keeper and as a commoner without a vote, and many of whose decisions were reversed, were exceptionally numerous and important.

A large number and variety of offices, not merely sinecures of honourable distinction, but to which attached some responsibility, had during the course of years devolved upon him. He still retained the Recordership of Dover and Gloucester, the duties of which were of course performed by deputies. In 1728 he had been made High Steward of Bristol. He was a governor of the Charterhouse, of St Thomas's, Greenwich, and the Foundling Hospitals, and Vice-President of St George's Hospital. In 1754 he was elected a member of the Royal Society<sup>4</sup>. He had been appointed High Steward of Cambridge University in 1749, a distinguished position held by his descendants for many generations; while another honourable office of an especially interesting character was that of Chancellor of the William and Mary College in Virginia, conferred upon him in January 1764, the intimation of which, however, only reached England after his death<sup>5</sup>. In 1753, together with the Archbishop of Canterbury and the Speaker of the House of Commons, he became a "principal trustee" of the newly-founded British Museum, established by Act of Parliament on June 7, and for which Montagu House in Bloomsbury, with nine acres of ground, was bought for £10,000<sup>6</sup>. Lord Royston was also elected a trustee in 1753<sup>7</sup>. Lord Hardwicke presided over the meetings,

<sup>1</sup> N. 226, f. 65.

<sup>2</sup> *George II*, ii. 277; H. 80, f. 1.

<sup>3</sup> H. 797, H. 816-21. The last case amongst his papers appears to be *Spotswood v. Burnet*, March 22, 1763, H. 821, f. 104.

<sup>4</sup> Lists of members of the R. S.

<sup>5</sup> H. 562, f. 218.

<sup>6</sup> H. 247, f. 244.

<sup>7</sup> H. 921, f. 57, but see R. S. lists, where the date given is 1755.



the first of which was held in April 1754, and to the great national institution, which was destined in after years to be the repository of his own papers and correspondence and the guardian and witness of his own greatness, he appears to have given, even while in office, indefatigable attention and support<sup>1</sup>.

A different and much greater responsibility, the charge of the judicial and legal appointments, had long been his, and continued to be his after he had ceased to be the official Head of the Law. We have seen how greatly his high conception of the duties of the Bench and the Bar tended to raise the standard of professional conduct. The same sentiments guided his careful and experienced choice of the administrators of the law<sup>2</sup>. An early letter, during the first years of his chancellorship, contains a strong protest against delay in making judicial appointments for political reasons<sup>3</sup>. On various occasions he advocated the increase of judicial salaries, from the scanty emoluments then prevailing to an adequate remuneration, "one of the great foundations of judicial independence and impartiality," and at the opening of the new reign a Bill was passed with his strong support, which gave the judges a tenure for the first time for life *quam diu se bene gesserint*<sup>4</sup>.

A similar conscientious care was practised in the important province of ecclesiastical appointments. A large number of the more enlightened and eminent bishops of the period, including Herring, Zachary Pearce, Sherlock, Warburton—to whom he was the first to give preferment—and Secker<sup>5</sup> owed their advancement to Lord Hardwicke's knowledge and appreciation of their character and abilities<sup>6</sup>.

Lord Campbell's statement, copied from the anonymous calumniator in Cooksey's *Essays*, that "Lord Hardwicke thought it his duty to dispose of ecclesiastical preferments in his gift

<sup>1</sup> H. 921, ff. 29, 73, 85; H. 50, f. 293. Thus he writes to Lord Walpole, June 20, 1756, of having been "detained in the Chair of the British Museum till past 12 o'clock last night." Above, p. 298.

<sup>2</sup> *Memoirs of Lord Ch. J. Wilmot* (1802), 8; *Life of Sir Michael Foster* (1811), 27.

<sup>3</sup> Above, p. 539.

<sup>4</sup> Below, vol. iii. p. 19.

<sup>5</sup> *Life of Archbishop Secker, Works* (1775), i. pp. xix, xlv.

<sup>6</sup> J. Nichols, in his *Lit. Anecdotes*, iii. 214, gives the following: "When Dr Nichols waited upon Lord Chancellor Hardwicke with the first volume [of Sherlock's *Sermons*, in 1753], his Lordship asked him whether there was not a sermon on John xx. 30, 31, and on his replying in the affirmative desired him to turn to the conclusion and repeated verbatim the animated contrast between the Mahometan and Christian religions, beginning, 'Go to your Natural Religion' (Discourse ix.) to the end. Such was the impression which this great and good man had retained of it for thirty years."

with a view to increase his own political influence, without any scrupulous regard for the interests of religion and without the slightest respect for scientific or literary merit," which has been reproduced and repeated by later ignorant or careless writers and exaggerated to such an extent as to provide a foundation for depreciating the state and tone of religion of the whole century<sup>1</sup>, is altogether a baseless calumny. In exercising the patronage of the Great Seal, he indeed considered himself as a trustee for the Crown<sup>2</sup> and excluded from it such candidates as were known to be hostile to the Hanoverian dynasty; but such restrictions, when the influence of the clergy among the young and uneducated is remembered, seem only in accordance with common sense and prudence, and were maintained in the true interests of religion and public policy. In the exercise of his patronage he laid down some wise regulations, which were afterwards followed by his successors. "It is my rule," he writes in 1751, "never to make previous promises of benefices before vacancies actually happen<sup>3</sup>"; and in rejecting an application on behalf of a candidate from the celebrated nonconformist, Dr Philip Doddridge, he lays down another, never to promise church preferment to persons not yet ordained<sup>4</sup>. He declined a doubtful candidate, recommended by Lord Bolingbroke<sup>5</sup>, and refused to allow the brother of Lord Derby, at the latter's petition, to hold pluralities<sup>6</sup>.

The claims of literary merit were not overlooked. Warburton no doubt received his preferment on that account<sup>7</sup>; and Thomas Birch, the historian and Secretary of the Royal Society, an intimate friend of the family, was given, through Lord Hardwicke's influence, a large number of livings at different times<sup>8</sup>. Dr Thomas Wilson was preferred by him to the living of St Stephen's, Walbrook, and Dr Nathaniel Foster, the well-known scholar and F.R.S., to his first living at Hethe, in Oxfordshire, and later to a preferment at

<sup>1</sup> Campbell's *Lives of the Chancellors* (1846), v. 166; and see Abbey and Overton, *The English Church in the 18th Century* (1887), 290; *Law Magazine*, iii. 108.

<sup>2</sup> H. 56, f. 64.

<sup>3</sup> H. 558, f. 171; Twiss's *Life of Eldon* (1846), ii. 495.

<sup>4</sup> Below, p. 584.

<sup>5</sup> H. 56, f. 64.

<sup>6</sup> H. 238, f. 117; also N. 5, f. 348; N. 41, f. 308; J. Nichols, *Illustrations*, iv. 34; cf. also the anonymous contributor to Cooksey's *Essays*, 78, who among a string of false charges includes this, perhaps a true one; "that he even made a merit of providing for his own and his lady's relations with a very sparing hand, pretending to have laid down a rule never to give more than one living to one person."

<sup>7</sup> J. Nichols, *Lit. Anecdotes*, v. 604.

<sup>8</sup> *Dict. Nat. Biog.*; J. Nichols, *Lit. Anecdotes*, v. 284; H. 48, f. 186. Lord Campbell, with his usual accuracy, represents him as "neglected and starving."

Bristol. John Dyer, the poet, the object of Wordsworth's sonnet, was appointed by him to two livings in succession<sup>1</sup>. Men of letters, moreover, often received his support in other ways. He obtained a pension for the family of Bishop Burnet, "who owe," writes a correspondent, "their very subsistence to your Lordship's charity and protection<sup>2</sup>." He supported the claims of the astronomer Bradley for promotion, provided for William Jones, the mathematician and formerly his own tutor<sup>3</sup>, extended his patronage to Philip Carteret Webb, the antiquary, whom he made Secretary of Bankrupts<sup>4</sup>, and gave financial assistance to John Leland, the writer against the Deists<sup>5</sup>, and to Dr William Webster<sup>6</sup>.

As a patron of men of letters he discouraged and declined the laudatory, and often fulsome dedications, which the custom of the time countenanced. Thomas Birch, when inscribing to him the *Thurloe Papers* in 1742, abstains from the usual flatteries, "as he knows too well how disagreeable such a subject would prove to your Lordship"; and in his brief and dignified paragraphs sets a new and healthy precedent. To Andrew Macdowall, who desired to dedicate to him his second volume of the *Institute of the Law of Scotland in Civil Rights*, he replied: "I desire it may be only by way of inscription, dedications being what I never much approved<sup>7</sup>." The *Typographical Antiquities* by Joseph Ames of 1749, is only inscribed to him<sup>8</sup>. In *Junius Brutus*, which was dedicated to him in 1735, by William Duncombe, the style is strictly restrained, and asterisks are substituted for his name<sup>9</sup>. Peere Williams inscribes very shortly his *Reports* to him, adding: "I know your Lordship's sentiments...too well to attempt a long discourse in the usual style of dedications"; and Warburton was only allowed to dedicate to him his *Divine Legation* in sober language, which had been approved beforehand by his son Charles Yorke and Murray<sup>10</sup>. He disappointed grievously Samuel Salter,

<sup>1</sup> *Dict. Nat. Biog.*; *Corresp. of John Hughes* (1773), ii. 191; Nichols, *Lit. Anecdotes*, viii. 457, ix. 291.

<sup>2</sup> H. 286, f. 224; H. 248, f. 333.

<sup>3</sup> Vol. i. 49.

<sup>4</sup> J. Nichols, *Lit. Anecdotes*, ii. 279.

<sup>5</sup> H. 245, f. 144. Lord Campbell's censure of Lord H. (*Lives of the Chancellors*, v. 41) followed by Lecky, for not continuing James Thomson, the poet, in the office of Secretary of Briefs, is entirely unjustified. It is even doubtful whether Thomson ever enjoyed any emoluments from this source. See his *Life* by G. C. Macaulay, 39, 43, in *English Men of Letters Series*; see also H. 49, f. 164; Seward's *Anecdotes*, ii. 340.

<sup>6</sup> J. Nichols, *Lit. Anecdotes*, v. 165, and further, i. 588.

<sup>7</sup> Vol. i. 620.

<sup>8</sup> J. Nichols, *Lit. Anecdotes*, v. 259.

<sup>9</sup> Lady Sundon's *Memoirs*, i. 394; J. Nichols, *Lit. Anecdotes*, viii. 268.

<sup>10</sup> *Letters from an Eminent Prelate*, 128.

formerly his domestic Chaplain and tutor to his sons, and later Master of the Charterhouse, by refusing in 1753 to accept his dedication of the *Moral and Religious Aphorisms of Benjamin Whichcote*, expressing "a dislike of such things in general and especially addressed to himself," and suggesting an inscription to one of the bishops<sup>1</sup>. At the same time, as is shown by the catalogue of his library at Wimpole, he gave his patronage to contemporary men of letters in that form which is by far the most efficient and acceptable, that of buying their books.

Retirement in Lord Hardwicke's case caused none of those sharp and bitter regrets which often accompany statesmen, who have grown accustomed to the busy importance of public life and to the popularity and power which attend high position, and who are reduced suddenly to the insignificance of private persons and to the tedium of aimless occupations. He had always retained his literary tastes and his love of country life, and to these he returned now with a zest for enjoying them, only possible to those who have long been excluded from them. "The person who seems least to have felt the change," wrote Miss Talbot's correspondent, "is himself, and indeed, although I expected everything good and great from his turn of mind, I hardly thought anyone could have quitted a high station and changed a life of business, which had grown into a forced habit, for one of great leisure, with such thorough ease and cheerfulness. He seems very happy in his liberty, has dined about with his family, and visited like an idle man, was at the concert here and in as good spirits as ever I saw him. He has indeed had the satisfaction of finding the regard formerly shown him was not paid merely to his place, since he was never so much visited or complimented as since he resigned<sup>2</sup>." Daniel Wray describes the life now at Wimpole: "Morning rides...evening walks, and (which is exactly right) before tea, lounges in the library....My Lord is renewing his old acquaintance with Tacitus." In the evening "whisk" was played for three hours, his younger son, James Yorke, writes, "an extraordinary change of the system at Wimpole<sup>3</sup>." He had become much attached to Wimpole and took great interest in the improvements which, under his direction, were carried out in the house and gardens. "It would give me much pleasure," he writes to Lord Royston in 1757,

<sup>1</sup> H. 244, f. 78; H. 258, ff. 58-61.

<sup>2</sup> *Quarterly Review*, xxvii. 195.

<sup>3</sup> H. 53, f. 214; H. 28, f. 224; Hardinge's *Life of D. Wray*, 125.

"to be convinced that you really like it. I made it for you, and hope to leave it to you with comfort<sup>1</sup>."

"The amiableness of his manners and his engaging address," his sons tell us, rendered him "beloved by those who had access to him<sup>2</sup>." "Lord Chancellor," writes a disappointed applicant for a living, "received me with that true greatness for which he is universally revered, and I could trace the amiable effects of his example down through the behaviour of all his domestics<sup>3</sup>." Few great men have ever, amidst the bustle and agitation of public life, retained so many strong and genuine friendships. When a person has been raised from a private station to a great office of state, with all the different interests, occupations and acquaintances that the latter brings with it, it often happens that the intimacies and friendships of youth, no longer supported by frequent intercourse, fade and disappear, and that without blame to either party. This was, however, not Lord Hardwicke's experience. In his correspondence may be still traced about a score of such relations, begun in youth, or early manhood, and maintained till death. He was strongly attached to his native town of Dover, and to the old friends of his family in that place and neighbourhood, such as the Papillons, the Plumptres, the Russells, the Minets, the Wellards, the Gunmans, with whom he kept up an unbroken correspondence. He was constantly visited by them, and many from these families received his invaluable support at their start in life, or during the progress of their careers. His own engrossing public duties did not hinder the continuance of his interest in their domestic affairs; and in one of his most anxious and busy years he found time to write to Captain James Gunman of Dover a long letter, to dissuade him from the perils of a second marriage in his old age<sup>4</sup>.

He retained till the last his office there of Recorder, to which he had been appointed when quite a young man, and was succeeded

<sup>1</sup> H. 3, f. 429.

<sup>2</sup> *Annual Reg.* (1764), p. 282 sqq.

<sup>3</sup> H. 242, f. 363.

<sup>4</sup> p. 582; and see vol. i. p. 51; H. 344, ff. 282-472 *passim*; H. 245, ff. 130, 324; H. 98, f. 30; N. 16, f. 72; N. 41, f. 308; H. 242, ff. 190 and 425. A large number of instances of these acts of kindness will be found in the correspondence; see also W. Minet, *The Huguenot Family of Minet*, 96, 116, 132; N. 246, f. 185; MSS of Martyn Mowll Esq. at Dover where are references to the Gunmans; H. 243, ff. 48, 62, 271; H. 285, f. 275; H. 344, ff. 92, 305-7; H. 236, ff. 180, 229, 274; H. 248, f. 426; H. 247, f. 125; H. 61, f. 173, recommending the younger Papillon to the Duke of N. at Hanover, "His father and grand-father were good old friends of mine"; N. 50, f. 18; H. 242, f. 422 from Jocelyn, Lord Newport, 1749, H. 6, f. 347, on the subject of his son. Charles Plumtre was made rector of Wimpole and subsequently given a succession of preferments; J. Nichols, *Lit. Anec.* viii. 389.

in it by his son Charles. On their side, the townsmen of Dover showed a sincere admiration and affection for the great Chancellor who had risen from their midst. They placed his portrait upon the walls of the Town Hall, where it still remains<sup>1</sup>. They frequently consulted him on their municipal affairs, and Lord Hardwicke sometimes used his influence in composing disputes and divisions in the Corporation<sup>2</sup>. On a vacancy arising in the parliamentary representation of the borough, through the retirement in 1759 of Hugh Valence Jones, Lord Hardwicke's nephew, appointed a commissioner of revenue, they elected unanimously General Joseph Yorke, and made him a freeman of the town on March 25, 1761. Lord Hardwicke wrote on this occasion: "I have always retained the warmest affection and regard for my native town, as well as a sincere desire to render it the best services in my power<sup>3</sup>." "We met with a most cordial reception from the inhabitants," wrote the new member, "numbers of whom remembered and enquired after your Lordship with a hearty affection, and it is very visible they are highly pleased to have a son of yours to represent them." In December 1760, the Mayor of Dover, with the second member of Parliament for the town, attended Lord Hardwicke at Court and were presented by him to the new King with their address of congratulation<sup>4</sup>. In 1759, Lord Hardwicke sent £100 for the restoration of the Town Hall, and subscribed the same sum the same year for the harbour improvements, his nephew Jones contributing an equal amount which probably came from the same source<sup>5</sup>; and in his will a special bequest of £100 was made to the poor of Dover<sup>6</sup>.

With his early associates at the Bar, such as Philip Ward and Idle, and with Jocelyn, Parker and Strange, pupils with him at Salkeld's, who all owed their high judicial appointments in the law, and the former his peerage, to his support, the same firm and uninterrupted friendship was kept up. "From the disposition and make of your soul," wrote Chief Baron Idle, one of his oldest acquaintances, "I always thought your Lordship warm and affectionate in your friendship....I have known...not one excel you in that divine quality<sup>7</sup>."

<sup>1</sup> H. 344, f. 293.

<sup>2</sup> H. 344, ff. 279, 286, 291, 373.

<sup>3</sup> H. 67, ff. 170, 177; H. 344, ff. 438, 459; and below, p. 587.

<sup>4</sup> MSS of Martyn Mowll Esqre. at Dover, kindly communicated to the author.

<sup>5</sup> Dover Records; H. 344, f. 379.

<sup>6</sup> H. 881, ff. 46 sqq.

<sup>7</sup> H. 99, f. 145; and cf. G. Hardinge, *Poems by Nicholas Hardinge*, whose "*scientiae et iudicii indicia Philippo Yorke placuerunt....Inde amicitia cultusque inter illos diligens...*"

Friendships such as these, not grounded upon interested motives and expectations but on genuine affection and life-long intimacy, were not terminated by the retirement of the great statesman from office, but bore now the fruit of their fullest maturity. Moreover, amidst the engrossing engagements and responsibilities of office, and during the whole of his long and steady devotion to public affairs, his family and children probably had always remained the main current of interest in his life.

One great source of his success had been his own happy marriage. Lady Hardwicke filled an important place in the family. She was a woman of "humane, benevolent, unaffected disposition," says a contemporary<sup>1</sup>, of strong character, practical wisdom, sincere piety and of warm and affectionate nature, known and beloved far beyond her domestic circle<sup>2</sup>. She appears to have exercised a good and wholesome influence over her seven children. She relieved her husband of nearly all domestic anxieties and responsibilities, and jestingly laid claim, "as she had good right to do, to so much of the merit of Lord Hardwicke's being a good Chancellor, in that his thoughts and attention were never taken from the business of the Court by the private concerns of his family<sup>3</sup>." She carried on his two great households with success, giving her personal attention to the smallest details of house-keeping. "Mama, all the while she was in the country," writes Lady Anson in 1747 to Col. Joseph Yorke, "acted the part of Mrs Setright the Housekeeper<sup>4</sup>." "Mama is extremely well," writes John Yorke in 1760, "but takes too much pains in her household affairs. She is really her own housekeeper<sup>5</sup>." Every Monday the books were reckoned up and the bills paid with commendable regularity, so that "Lord Chancellor owed not a shilling to any man<sup>6</sup>." She caused the embroidered purses, which carried the Great Seal and which were renewed every year, to be mounted on red velvet, and these, at last twenty in number, completed the hangings and curtains of the state room at Wimpole, where some of them may still be seen,—an interesting memorial of Lord Hardwicke's

Liceat hic uno verbo laudem illi unice meritam ascribere. In omni tenore vitæ amici nullius fidem et amorem perdidit." Preface, xi.

<sup>1</sup> V. Green, *Survey of the Hist. of Worcester* (1764), 250, where she is eulogised and where, among other virtues, she is declared to have been "generous without ostentation and hospitable without parsimony."

<sup>2</sup> Philip Doddridge's *Corresp. and Diary*, iv. 364, v. 79; see also her Letters above, chaps. xii., xiii., xiv.

<sup>3</sup> R. Cooksey's *Essays*, 33.

<sup>4</sup> H. 39, f. 59.

<sup>5</sup> H. 26, f. 179.

<sup>6</sup> Cooksey, 38.

long and famous Chancellorship and of his wife's good taste in household decorations<sup>1</sup>.

These careful managements were the subject of exaggeration and ridicule with the Chancellor's enemies and Tory opponents, and absurd stories were circulated by Horace Walpole and kindred wits. Lady Hardwicke's desire to diminish the consumption of "small beer" in her household, apparently a most commendable economy, occasions a conversation between Horace Walpole and the Jacobite William Cole, on "the miserable and penurious turn of the whole family, than which nothing can be more illiberal and wretched, tho' possessed of immense wealth, and the children married into the most wealthy families." Equally innocent and laudable appears to us the care exercised upon the choice of wall-paint. "There was a pleasant dispute," continues Cole, "between him and his Lady about painting one of the rooms they usually sat in; my Lord was for having it of an ash or olive colour, as the least expensive and what would last longer without repainting than many other colours, but to this my Lady objected that, tho' it was a cheaper colour and lasted longer, which were very weighty reasons, yet it was very unfashionable; and notwithstanding the fashionable French white was expensive at first, yet she had calculated that it would be much cheaper in the end than the colour mentioned by his Lordship, as there would be occasion for two candles only in a room painted with a fine white, whereas four would be necessary in a more gloomy coloured room. Upon which nice discussion the apartment was put in the fashionable taste. Whether these stories are literally exact or not, they manifest too clearly the miserly and wretched disposition of those they were intended to ridicule<sup>2</sup>." Moreover Lord Royston, having alluded in some verses to Jacobite claret potations, the same author gives this propensity as "one reason among others why none of the York family will ever be Jacobites, if Claret is their liquor, very little of so expensive a wine ever appearing at their wretched table<sup>3</sup>."

There is a strong flavour of sour grapes here. The best judges of hospitality are those that have partaken of it, and not those who are excluded. Lady Hardwicke, says Richard Cooksey, "would often smile at hearing the idle and malevolent tales of the cold chine being turned and found bare, the potted sawdust to represent lamprey, and the want of Dr Mead's kitchen to be added to Powis

<sup>1</sup> Cooksey, 39.

<sup>2</sup> Cole MSS Add. 5823, f. 135.

<sup>3</sup> Add. 5832, f. 129.



House<sup>1</sup>; and only observe that, uncertain as was the time of Lord Chancellor's dining and the company that would attend him, yet, if it should happen that he brought with him an ambassador or person of highest rank, he never found a dinner or supper to be ashamed of<sup>2</sup>."

The same accusations of avarice and parsimony, as is well known, have been brought against Lord Hardwicke himself and especially in the character drawn of him by Lord Chesterfield's grudging hand. "Though avarice was his ruling passion, he was never in the least suspected of any kind of corruption, a rare and meritorious instance of virtue and self-denial, under the influence of such a craving, insatiable and increasing passion....By great and lucrative employments, during the course of thirty years, and by still greater parsimony, he acquired an immense fortune, and established his numerous family in advantageous posts and profitable alliances<sup>3</sup>."

It is obvious that the charge is presented somewhat in the form of a paradox. A passion so strictly regulated and controlled can scarcely be termed a "ruling," "insatiable" or "increasing" one. The truth is that Lord Hardwicke's character was infinitely above the capacity of such persons as Lord Chesterfield to comprehend. Those who have followed his career with us so far will easily recall numerous instances in his life of an inclination exactly the contrary, of a large generosity, and of the subordination of pecuniary

<sup>1</sup> No doubt Dr Richard Mead (1673-1754), the celebrated physician and scholar, noted for his hospitality and open house.

<sup>2</sup> Cooksey's *Essays*, 40.

<sup>3</sup> He continues: "He had great and clear parts; understood, loved and cultivated the *belles lettres*....Lord Hardwicke valued himself more upon being a great minister of state which he certainly was not, than upon being a great magistrate, which he certainly was. All his notions were clear but none of them great. Good order and domestic details were his proper department. The great shining parts of government, though not above his parts to conceive, were above his timidity to undertake." These "shining parts of government" and "great notions," must, it is inferred, be sought in Lord Chesterfield himself. See also the unfavourable character drawn of Lord H. by Lord Waldegrave, which, however, as the testimony of a disappointed and not very brilliant political opponent and a member of Horace Walpole's clique, is less worthy of attention. "He was undoubtedly an excellent Chancellor, and might have been thought a great man, had he been less avaricious, less proud, less unlike a gentleman and not so great a politician." *Mem.* 20. Cf. John Nicholls, *Recollections*, ii. 120: "Everyone must see that this character was not drawn by a friendly hand"; and cf. also Horace Walpole's description: "A man who, during his power, had covered over very confined parts, and very few virtues, with a gravity that was construed into both, as it served the purpose of himself or his dependants. Pride, revenge and avarice were his true features; and whatever pictures shall be drawn of him where those lines do not predominate, will be unlike, false and flattering." *George III*, i. 306, and see above, vol. i. 568 n.

considerations to a high and magnanimous rule of conduct. In the height of his fame as a young barrister, his scrupulousness in accepting no more briefs than he could honestly attend to, had been the subject of comment. He had acquiesced in the promotion of a junior over his head to the Woolsack, the great prize of the Law, and had refused to accept the extra salary then allotted to the Chief Justiceship, unless made a permanent addition to the remuneration of that office. During the long course of his Chancellorship, his demands upon the Crown for places and emoluments had been very few compared with those claimed by, and granted to, his predecessors and successors. For himself he had not asked one, and had, at his retirement from office, declined the usual pension<sup>1</sup>. His generous treatment of his children must be allowed to show that his character, at least, was not quite that of a Harpagon or the traditional miser. To his daughters on their marriages he had allotted substantial portions. To his sons, during his own lifetime, he had given up considerable parts of his own estate, Charles receiving his lands in Kent, Joseph those in York and Durham, and John those in Devonshire of about £400 a year. To James he gave £6500 on his marriage<sup>2</sup>. He frequently assisted his sisters, his sisters' husbands, and their children with money. The former enjoyed annuities from his purse till their deaths<sup>3</sup>. Outside the circle of his own family many instances of his kindness of heart and liberality are recorded. The place of governor of five London hospitals is not one which we should expect to see filled by an habitual miser. The support given by him to men of letters has been already noted. He contributed large sums to various public objects, such as the national war subscriptions, the construction of roads in Cambridgeshire<sup>4</sup>, the improvements of Dover Harbour, the Moravian Church in America<sup>5</sup>, the rebuilding of the parish church at Wimpole<sup>6</sup>. In 1757 he received the thanks of the Minister of the village of Haddenham, and of the chief inhabitants, for his "long-continued and well-judged benevolence to the distressed and industrious poor<sup>7</sup>." Such acts, though only those accidentally mentioned in his correspondence or elsewhere,

<sup>1</sup> *E.g.* Lord King received a sum of £20,000 on his retirement; Lord Camden on becoming Chancellor was granted £1500 over and above his salary. Lord H.'s successor, Henley, Earl of Northington, obtained a pension and a reversion on his retirement. *Dict. Nat. Biog.*

<sup>2</sup> H. 880, ff. 201, 278 and his will, H. 881, ff. 46 sqq.

<sup>3</sup> H. 62, f. 234; H. 246, f. 181.

<sup>4</sup> J. Nichols, *Lit. Anecdotes*, iii. 491.

<sup>5</sup> H. 242, f. 273.

<sup>6</sup> Vol. i. 206.

<sup>7</sup> H. 331, f. 210.

go far to disprove the charge of avarice; for, as is well-known, there is no character so consistent as that of a miser and none which permits less of any relaxations.

An enumeration, however, of such contributions can give no real notion of the nature or scope of Lord Hardwicke's generosity. We cannot pry into his private charities. Mrs Montagu writes: "The character Lord Chesterfield has drawn of the late Lord Hardwicke renders Mrs Montagu more than ever averse to this species of writing. To his Lordship's great qualities he has done very niggardly justice, and has gratuitously bestowed the vice of covetousness upon him. I have been credibly informed that his Lordship, tho' in possession of all the secrets of the Cabinet, never made one shilling by stock-jobbing, tho' his ready money might have procured him infinite sums so employed. Lord Hardwicke's table, his whole domestic arrangement, was much [more] noble and liberal than Lord Chesterfield's, who had no children, and Lord Hardwicke's charity was unbounded<sup>1</sup>...."

He was not indifferent to appearances, and fully maintained the outward dignity of his great office. "I have also heard it said," writes John Nicholls, no favourable critic, "that although the Earl of Hardwicke practised much frugality in his private life, yet, whenever he presented himself on public business, no man was more observant of the splendour which suited the occasion<sup>2</sup>."

The malice of political opponents or an unscrupulous press is often the sole foundation of calumnies against public men, and our own times furnish extraordinary examples of falsehoods thus invented, circulated and believed. Another ground probably of the aspersions upon Lord Hardwicke was the jealousy which was always aroused when a stranger found his way inside the charmed circle of Whig peers, broke through their monopoly of power and founded a new country influence<sup>3</sup>. Identical reflections had been cast upon former chancellors, and were also made to the disparagement of later ones, such as Lord Thurlow and Lord Eldon, who was accused of heaping up a million and a half of money and preventing judges from being raised to the peerage, and with no better reason. Moreover, the acquisition of a large fortune, and with it of political influence, always excites far more envy—such is human nature—when gained by personal ability

<sup>1</sup> H. 268, f. 160; and *Life of Bishop Newton, Works* (1782), i. 76.

<sup>2</sup> *Recollections*, ii. 121.

<sup>3</sup> See e.g. Cooper, *Lettres sur la Chancellerie* (1830), 26.

and arduous labour, than when inherited, without any merit of the individual, from his ancestors. Lord Hardwicke's estate was entirely the fruit of long years of laborious and faithful public service and of his own talents. Reproached once with having "received favours from the King for so many years and of having got an immense estate for himself and his family," he had replied with dignity and perfect truth: "I own I have got one by my profession, not an immense but a moderate one<sup>1</sup>." Like Sir Robert Walpole, he might have said: "Had he increased his fortune with the same number of years' service and the same application in any profession of the other side of Temple Bar, nobody would have thought it unreasonable<sup>2</sup>." Its amount was probably exaggerated by his enemies<sup>3</sup>. The Chancellor's salary was £5000 a year, which, however, was greatly augmented by the fees of his Court, and represented only a small portion of his emoluments which, in Lord Hardwicke's case, as in Lord Eldon's, probably amounted to at least £20,000 a year<sup>4</sup>. No doubt such a salary, continued for 20 years, and added to substantial earnings at the Bar, amounted to a very considerable sum. The immediate purchases of land, moreover, which he made therewith, owing to the rise in value of land and of the rents, proved a much more profitable investment than the acquisition of mortgages at 5 per cent. would have been<sup>5</sup>. But the Chancellors who rose from a private station in life, as Lord Stanhope points out with his usual perspicacity<sup>6</sup>, were in a very different position financially to the great Whig peers who lived on large hereditary incomes. There was at that time no retiring pension attached to their office, and in their case these sums were not income but capital, to be put by for the future provision of the family, and to establish it in its new position of power and influence with proper dignity. Lord Hardwicke had once said in giving a decree in Court: "In my opinion...a person, who takes a title of honour from the Crown, ought in duty to the Crown, to the public

<sup>1</sup> Above, p. 390.

<sup>2</sup> *Hist. MSS. Comm.* Earl of Carlisle, 65.

<sup>3</sup> E.g. by the Jacobite Dr King (*Political and Literary Anecdotes* (1819), 101). "My Lord Hardwicke, the late Lord Chancellor, who is said to be worth £800,000, sets the same value on half a crown now, as he did when he was only worth £100." His whole narrative is full of rubbish or misstatements such as that Lord H. did not learn Latin till after he became Chancellor, etc. According to Henry Etough, the Cambridgeshire and Hardwicke estates brought in less than £6000 a year. See above, p. 307.

<sup>4</sup> *Parl. Debates*, xxiv. 680; the amount was said by Brougham to be nearer £18,000, *ib.* 148.

<sup>5</sup> W. Seward's *Biographiana* (1799), 573.

<sup>6</sup> *History of England*, iii. 201; and see John Nicholls, *Recollections*, ii. 120, in the same sense.

and his family, to transmit a competent estate to the heir of the title<sup>1</sup>." Moreover, the exact and careful management of his affairs<sup>2</sup>, the frugality, homeliness and simplicity of life, which he maintained, while they have nothing in common with the studied pose and polish of Lord Chesterfield, with his "exquisitely elegant" manner and morals of the dancing master, or with the sham Gothic of Horace Walpole, or with that vulgar ostentation, which is sometimes mistaken for real grandeur<sup>3</sup>, were strictly in keeping with his character and tastes, as they have been with those of many other great men.

Undisturbed by petty calumnies such as these, Lord Hardwicke looked round on his large family, often assembled at Wimpole, with pride and satisfaction. His old acquaintance, the Archbishop of Canterbury, had congratulated him a year or two previously on the happiness of his domestic life, "surrounded with so many faithful and valuable friends, and, what enhances the pleasure, friends of your own raising," and had contrasted the loneliness of his own bachelor existence<sup>4</sup>.

"Thy Sons their Sire beholding catch the Flame [wrote Lord Lyttelton]  
Of Virtue, and their Ears attentive draw  
The Streams of Wisdom from his [thy] honoured Mouth.  
In each thou seest (Felicity to Man  
Most rarely granted!) all thy Cares repaid;  
While each, thro' different Paths, to Glory's Shrine  
By Justice, Prudence, Courage, Piety,  
Conducted, hastens, and already seems  
The arduous Temple's highest Steps to gain<sup>5</sup>."

His eldest son was a man of steady character and principles and of considerable political insight gained by wide reading in history and from his own experience. As Lord Lieutenant of Cambridgeshire in his Father's place, as his Father's heir, and in virtue of his wife's property at Wrest, he was a person of some weight in the country, and though keeping aloof from the active turmoil of politics and the contest of factions in the House of Commons, was already regarded, together with his brother Charles, as a possible leader of the Whig party in the House of Commons. "He is a worthy, virtuous and learned man," wrote his brother

<sup>1</sup> H. 664, f. 62.

<sup>2</sup> *E.g.* H. 331, f. 63.

<sup>3</sup> It may be thought that too much importance has been attached to these baseless imputations, which might be dismissed at once as obviously incongruous with the whole of Lord H.'s life and character of which we now know so much. But they have been given special prominence in Lord Campbell's untruthful pages, where they are set out anew with all the embellishments of a flowing and amusing style and supported by all the weight of his name and great office.

<sup>4</sup> H. 251, f. 215.

<sup>5</sup> H. 249, f. 242.

Joseph of him, "and it is a loss to his country that he had not been a younger brother and forced to push himself or that his friends had not forced him into public life<sup>1</sup>." He moved the address of thanks to the new King at his accession, on November 20, 1760, in a speech much praised by Pitt<sup>2</sup>, and in 1761 he was made a member of the Privy Council or larger Cabinet without office. "That family," wrote Horace Walpole to Sir Horace Mann, "is very powerful. The eldest brother, Lord Royston, is historically curious and political. If, without its appearing too forced, you could at any time send him uncommon letters, papers, manifestoes and things of that sort, it might do you good service<sup>3</sup>."

Charles Yorke, whom his father had sworn in Solicitor-General on November 3, 1756<sup>4</sup>, notwithstanding that he had been passed over for the Attorney-Generalship in 1757 in favour of Charles Pratt, was by common consent, now that Murray had accepted a peerage with the office of Lord Chief Justice, by far the greatest figure at the Bar, and seemed destined by every circumstance of the time, to succeed his Father on the Woolsack. "My second brother," writes the second Lord Hardwicke, "was high in the opinion of his profession, getting forward in it daily; in the office of Solicitor-General, in which he may be said to have had the labouring oar,—the preparing reports for which the King's lawyers are called upon by various references was entirely left to him by Sir Charles Pratt<sup>5</sup>—and even then destined by everybody for the Great Seal, as soon as it became decent and practicable to carry so young a man so far<sup>6</sup>": and when the present Chancellor, Lord Henley, whose health was bad, should resign, an event which, it was thought, would soon occur. Lord Mansfield, writing to Warburton, speaks at this time of his "great knowledge of the law, erected on general and enlarged principles of science, unknown to the generality of [the] profession<sup>7</sup>." "My Lord Mansfield told me last night," writes the Duke of Newcastle, on January 26, 1760, "that he never heard a finer argument in his life than your son

<sup>1</sup> *Hist. MSS. Comm. Rep.* x. (1), 368.

<sup>2</sup> *Parl. Hist.* xv. 832, 988; H. 75, f. 216.

<sup>3</sup> *Letters*, iv. 91.

<sup>4</sup> Lord H's *Pro-Memoria*, H. 900, f. 1.

<sup>5</sup> See C. Y.'s *Report Book*, H. 874; and below, vol. iii. p. 366.

<sup>6</sup> H. 80, f. 1.

<sup>7</sup> *Letters from Warburton to C. Y.* printed by the latter's son, the third Lord Hardwicke (1812), 24; and see W. Blackstone's application to him for legal information and MS cases and his thanks for notes "very material for his purpose." H. 288, ff. 66, 76.

made yesterday in the Duke of Devonshire's cause, and where there was a great deal of new matter<sup>1</sup>."

He was made Treasurer of Lincoln's Inn in 1756, next year Librarian, and in 1759 his arms were ordered to be put up in the Chapel<sup>2</sup>. Danby Pickering, in 1763, dedicated to him his *Statutes at Large*. He seems to have had a large practice in cases of appeal before the House of Lords, and his arguments often appear in his father's notes<sup>3</sup>. He took a leading part, amongst others, in the trial of Dr Hensey, a French spy, who had given information to the enemy of the movements of the British troops, and of the project against Rochefort<sup>4</sup>: and again in that of Lord Ferrers, charged before the Peers in Westminster Hall with the murder of his steward. A strong defence was made by the prisoner himself on the ground of insanity. In his reply, the Solicitor-General cited distinctions, made by Sir Matthew Hale, between the various kinds and degrees of madness; but it is doubtful whether the clear definitions, which he gave concerning whole or partial insanity and "lucid intervals," would be accepted now in their entirety, either by lawyers or physicians. As in so many cases of this description, the line had to be drawn between insane and insensate brutality; but following closely the evidence, the Solicitor proved that the crime had had a motive, was premeditated, and that the prisoner, after committing it, had immediately feared the consequences. His speech is much admired by Lord Campbell, who styles it "one of the finest forensic displays in our language, containing along with touching eloquence, fine philosophical reasoning on mental disease and moral responsibility<sup>5</sup>," and the speech with its clear argument and restrained language may still be read with pleasure. It ended with an eloquent sentence, which in its style, and reliance on philosophical principles and in its tendency to generalisation, strongly recalls the utterances of his Father. "My Lords, in some sense, every crime proceeds from insanity. All cruelty, all brutality, all revenge, all injustice is insanity. There were philosophers in ancient times who held this opinion as a strict maxim of their sect; and my Lords, the opinion is right in philosophy but dangerous in judicature. It may have a useful and a noble influence to regulate the conduct of men, to control their impotent passions, to teach

<sup>1</sup> H. 216, f. 480.

<sup>2</sup> *Lincoln's Inn Black Books*, iii. 359, 362, 367.

<sup>3</sup> H. 809-820.

<sup>4</sup> *State Trials*, xix. 1342; H. 539, ff. 37 sqq.

<sup>5</sup> *Lives of the Chancellors* (1846), v. 399.

them that virtue is the perfection of reason, as reason itself is the perfection of human nature; but not to extenuate crimes, nor to excuse those punishments which the law adjudges to be their due<sup>1</sup>."

In politics Charles Yorke's abilities were equally recognised. On January 25, 1762, on Pratt accepting the Chief Justiceship of the Common Pleas, he was made Attorney-General<sup>2</sup>. He was now one of the leading members of the House of Commons, his support being anxiously sought by each of the different factions and by the Crown; and his weight and influence at last increasing so greatly as to make him think seriously of abandoning his profession for political office<sup>3</sup> and to render him, within the Whig party, a possible rival to the great Pitt himself. At the opening of the new reign there was thus every sign that a great and honourable career, in both spheres of law and politics, awaited the brilliant and accomplished Charles Yorke.

On May 19, 1755, he had married Catherine Freeman, daughter and heir of William Freeman, of Aspenden in Hertfordshire, by which alliance he acquired, on the death of his wife's mother in 1763, Tittenhanger and a considerable estate from the Blount family, with an income amounting to about £2300<sup>4</sup>. This union brightened the life of Charles Yorke for four short years only, but was the source of great joy to Lord Hardwicke; for on May 31, 1757, was born to them a son Philip, afterwards the third Earl of Hardwicke, and Viceroy of Ireland, an event of special importance; since Lord Royston's marriage had produced only two girls, and to neither of his two other married sons was there granted any male offspring during his lifetime<sup>5</sup>.

The Chancellor's third son, Joseph, already Colonel of the 9th regiment of Foot Guards and Aide-de-Camp to the King<sup>6</sup>, was further promoted to the rank of Major-General and Colonel of a regiment of Dragoons in 1758, Colonel of the 5th Irish Dragoons, November 27, 1760, and Lieutenant-General, December 9, 1760; and became M.P. for Dover and was created a Knight of the Bath in 1761<sup>7</sup>. He remained Minister at the Hague, where his influence

<sup>1</sup> *State Trials*, xix. 954, where the whole speech is printed; H. 539, ff. 50 sqq. Lord H. had been made arbitrator previously between the Earl and his wife, who obtained a separation in 1758. H. 247, ff. 145-9, 178, 182, 196. For account of Lord Ferrers and his execution, see Walpole's *Letters*, iv. 378, 390.

<sup>2</sup> H. 900, f. 1.

<sup>3</sup> He was dissuaded by his Father, below, pp. 588, 590.

<sup>4</sup> H. 889; N. 170, f. 58; H. 5, f. 233; N. 263, f. 165.

<sup>5</sup> N. 186, f. 189; below, p. 588.

<sup>6</sup> Above, p. 148.

<sup>7</sup> H. 248, f. 193; H. 70, f. 49; Mackinnon's *Hist. of the Coldstream Guards*, ii. 482.



with the Princess of Orange and, after her death, with the young Stadtholder was extremely useful. Wraxall, who visited him still here some years afterwards, writes of him: "Sir Joseph Yorke, who was afterwards created Lord Dover, maintained a distinguished rank among the members of the Corps Diplomatique in 1777 at the Hague. His table, splendid and hospitable, was open to strangers of every country....His manners and address had in them something formal and ceremonious; but the vigilance and ability which he displayed during above five and twenty years that he was Ambassador of England to the States General, more than compensated for these defects of external deportment. Never, perhaps, at any period of modern time, except by Sir William Temple under Charles II, were the interests of Great Britain so zealously, yet temperately, sustained as by him, for whom the Stadtholder felt and expressed a sort of filial regard<sup>1</sup>." His "continual zeal and diligence to every branch of his Majesty's service" obtained the King's "constant approbation<sup>2</sup>." One sphere of usefulness, in which he particularly excelled, was the collection of trustworthy information, and he was generally the first to send news to the government at home<sup>3</sup>. His influence and prestige had become very considerable in the diplomatic world. Lord Chesterfield impresses on his son the importance of forming relations with him<sup>4</sup>. "If you could wind into a correspondence with Colonel Yorke at the Hague," writes Horace Walpole to Sir Horace Mann, "he may be of great service to you<sup>5</sup>."

His efforts were continually directed against the extension of French influence in Holland and in support of the alliance between the States and Great Britain, a policy which encountered great obstacles in both countries. He was convinced of the necessity of continuing the great struggle with France to the death, in every part of the world. Supplementary to this, in his opinion,

<sup>1</sup> Wraxall's *Memoirs* (1884), i. 130, and cf. Rigby, who writes July 1764, *Bedford Corres.* iii. 265: "At the Hague we found Yorke's character for pride and hauteur established."

<sup>2</sup> E.g. December 13, 1757, Record Office, *State Papers*, Holland. In the *Commons Journals*, xxxii. 514-555, will be found an account of payments made to him which seem to average about £5000 a year.

<sup>3</sup> Walpole's *Letters*, iv. 290. Sometimes, however, the first reports of victories, which he sent on, proved delusive, and provided Walpole with good opportunities for composing a paradox or an antithesis; e.g. "Mr Yorke, who every week 'lays himself most humbly at the King's feet' with some false piece of news, has almost ruined us in illuminations for defeated victories." *Ib.* 295. See also below, vol. iii. 127.

<sup>4</sup> *Letters* (Bradshaw), 1213.

<sup>5</sup> *Letters*, iv. 91.

was the conclusion and maintenance of a firm alliance with Frederick of Prussia, together with an understanding with Russia and the northern powers. He returned from his mission to Frederick in 1758 more enthusiastic in his cause even than before; and throughout the whole war, even in Frederick's darkest hours, he never lost his hopes or confidence in his hero. The Hanoverian policy he could support as long as the electorate was included in the alliance against France, and did not pursue outside it separate schemes, contrary to the British interests. This was playing the great game; and if occasionally, in his impatience to see his country take the first place in the world, which he felt to be her due, he underestimated the difficulties with which the British ministers had to contend in satisfying the King and the Parliament, in procuring supplies and in maintaining the necessary concert and union amongst themselves, yet his buoyant spirits, his persevering energy and his healthy, breezy optimism are pleasantly contrasted with the pessimism and weakness often exhibited at home, the result chiefly of exhausting domestic contests of faction and the conflict of separate and rival interests. "Yorke is always sanguine," the old King declared of him in 1759<sup>1</sup>. Such being his turn of thought and such his aspirations, he heartily welcomed the establishment of a strong administration in 1757 and the advent of Pitt to power. Unfortunately, the jealousies and interests of faction, which have been so often the bane of English politics, prevented a proper and cordial co-operation, and brought about evil and mischievous divisions, which were near wrecking the whole administration, and of which some curious developments will be seen in a subsequent chapter. It was a principal aim of Pitt and his party, now included in the Cabinet, to increase in every way their own power and to diminish that of the Duke of Newcastle. Accordingly, General Yorke, as a supporter and follower of the Duke, was regarded with suspicion, and every effort was made to diminish his influence. Attempts to remove him, first to Prussia and then to Spain, were frustrated, and he remained at the Hague, no longer, however, enjoying the full confidence of the whole Cabinet, and finding himself omitted in some important negotiations, while in those, which he was instructed to carry on, he was left unsupported by the new ministers<sup>2</sup>.

<sup>1</sup> Occasionally his "puffs" and "Yorkisms" were laughed at. See note above, and N. 204, f. 443; N. 209, f. 137; H. 344, f. 149.

Below, vol. iii. pp. 20 sqq., 131, 243.

Lord Hardwicke's fourth son, "plain John," as he was called in later years, in contrast to his four more distinguished brothers in the House of Lords, a member of the Bar, and M.P. for Higham Ferrers, had been made Clerk of the Commission of Bankruptcy in 1755; and in March 1761 he was appointed a Commissioner for Trade and Plantations; while in 1765 he became a Lord of the Admiralty. John Nichols describes him as "one of the most amiable men that ever I knew; modest, enlightened, elegant, and engaging in his manners, universally beloved<sup>1</sup>." He was of a retiring disposition<sup>2</sup>, took little part in public affairs and no speech of his appears in the parliamentary debates of this period. While Lord Hardwicke's other sons were absent or pre-occupied, he was in later years his father's chief companion, performed the duties of his secretary and, in the latter's words, was "a comfort to him<sup>3</sup>." On January 1, 1762, John Yorke married Elizabeth, daughter of Reginald Lygon of Madresfield, great-great niece by marriage of his mother, whose first husband had been William Lygon of the same family.

James, Lord Hardwicke's youngest son, ordained in 1754, held successively canonries at Bristol, Rochester and Windsor<sup>4</sup>. He occupied also Lord Royston's living of Horkesley in Essex of the value of £220 or £240 a year, where he kept a curate and cleared about £160 per annum. This living, however, he vacated in 1756<sup>5</sup>.

As a young man he was modest and diffident, with the "shyness peculiar to his family<sup>6</sup>." In 1757 his father describes him as "very thin," and embarrassed at an offer of the Preachership of the Rolls, which he wished to accept, but "cannot bring his poor spirits up to venture upon setting himself in such a light. Your mother and I think it best to leave him quite to his own decision, and only endeavour to keep up his spirits by talking cheerfully to him on the subject<sup>7</sup>." Eventually he accepted this appointment and also the living of St Martin's in the Fields and of St Giles's at Reading. On January 15, 1762, he was made Dean of Lincoln and resigned his canonry, retaining, however, his living at Reading<sup>8</sup>.

The same year, on June 29, he married the only daughter and

<sup>1</sup> *Illustrations of Lit. Hist.* i. 130.

<sup>2</sup> Cooksey, 33.

<sup>4</sup> H. 244, f. 333.

<sup>6</sup> J. Nichols, *Literary Anecdotes*, vi. 614.

<sup>8</sup> J. Nichols, *Literary Anecdotes*, ix. 673. *Calendar of State Papers, Home Office*, 1760-5, p. 220.

<sup>3</sup> Below, p. 596.

<sup>5</sup> H. 56, f. 116.

<sup>7</sup> H. 3, f. 428.

heir of Dr Isaac Maddox, the late Bishop of Worcester, and acquired thereby the Forthampton estate in Gloucestershire<sup>1</sup>. In after years he was known as an excellent Bishop, successively of St David's, Gloucester and Ely.

It was not often that one family produced men of such varied and acknowledged abilities as Lord Hardwicke's sons.

Longo ordine nati  
Clari omnes, patria pariter virtute, suaque,

wrote a contemporary poet in their honour<sup>2</sup>. "That family of the Yorke's," declared the veteran Lord Granville, then on his death-bed, "are most surprising, all men of parts, all virtuous and able. There are not so many brothers who have turned out so happily in all England, and I know most of the families<sup>3</sup>." Four of them had seats in the House of Commons, and Lord Royston's political sagacity, family and country influence, Sir Joseph Yorke's military experience and diplomatic talents, and Charles Yorke's eminence both at the Bar and in Parliament, together with Lord Anson's genius in naval administration, might easily have provided material for a whole cabinet. Later, four sons also found their way into the House of Lords. Lord Hardwicke himself had then disappeared from the scene; but the talents and virtues of the younger generation were recognised in, and traced back to, the founder of the family.

"Our family," wrote the second Lord Hardwicke, "was in a situation as honourable, as distinguished, and as advantageous as can well be imagined...for which of course, we were sufficiently envied by the rest of the world<sup>4</sup>." A guest at Wimpole in 1757, records the pride and pleasure with which, in their absence, the letters of Lord Hardwicke's sons with the accounts of their activities in their different spheres, were received by their parents. "When I read them all aloud after dinner, I could not but observe the satisfaction my Lord and Lady felt from three such able despatches from the Solicitor, the Lord Lieutenant and the Envoy<sup>5</sup>." To hear his son, the Solicitor-General, arguing a case before him in the House of Lords, to see Lord Royston sitting opposite to him in the Cabinet and to have Sir Joseph quoted

<sup>1</sup> Below, p. 597.

<sup>2</sup> J. H. Browne, *De Animi Immortalitate*. J. Nichols, *Select Coll. of Poems*, vi. 106 n.

<sup>3</sup> *Hist. MSS. Comm.* G. Aitken, 339.

<sup>4</sup> H. 80, f. 1.

<sup>5</sup> H. 53, f. 214.

upon him from the Bar for the definition of a point in the Law of Nations, made their Father, as he said, feel "an old fellow," but also a very proud one<sup>1</sup>.

"Je retiendrais toute ma vie," wrote Count Poniatowski, afterwards the last unfortunate King of Poland<sup>2</sup>, to Charles Yorke: "l'impression que m'ont laissée ce Père et ces enfants, réciproquement si heureux, parce qu'ils sentent parfaitement combien ils ont raison de l'être. Je ne puis penser à votre Père sans cette vénération qu'on porte nécessairement to a powerful, good being much above us (car c'est dans ce jour que je l'ai vu); et je ne pense jamais à vous, à vos frères, à mylord Anson, sans sentir en moi cette douce bienveillance et ce principe d'émulation que produit toujours la vue de gens qui sont véritablement bons citoyens et bons humains<sup>3</sup>."

Lord Hardwicke's cup of happiness must now have been brim-full, and to few men has been granted so great a harvest of success. When, however, he considered the wonderful height of power and reputation to which he had raised himself and his family, and looked back at his whole career, which under God's providence had been an unbroken course of prosperity and sunshine, dimmed by no calamity, disappointment or bereavement, scarcely clouded even by an anxiety, and embittered by no struggle or rivalry, he felt that such wonderful good fortune could not last. "We must not expect always," he wrote, "to receive good things at His hand and not evil<sup>4</sup>."

His apprehensions were in great measure fulfilled during the next few years. In the winter of 1759 he was himself seized with serious illness, which proved to be of the nature of a rupture, and which, at first, with its prospect of a life of ailments and inactivity,

<sup>1</sup> H. 4, f. 157; *Hist. MSS. Comm. Rep.* iii. 415.

<sup>2</sup> Stanislas Auguste, Count Poniatowski (1732-1798), son of Stanislas, Count Poniatowski, general in the Swedish army, was famous for his handsome and "almost regal bearing," and brilliant qualities and had made a close friendship, during his visit to England, with Lord Hardwicke's family, especially with Charles Yorke, with whom he maintained a correspondence. He was introduced at St Petersburg by Sir Charles Hanbury Williams as his secretary, became the lover of the Grand Duchess, afterwards the Empress, Catherine, and Polish minister, in which capacities he was employed in counteracting French influence at the Russian court, but was finally, in 1757, owing to French intrigues, worsted and obliged to leave the country. In 1764, he was made, through the new Empress's support, King of Poland, as Stanislas II. The history of his troubled reign, in which Poland became the prey of its powerful neighbours and in which his character rapidly deteriorated, is well known. After a series of adventures and misfortunes he abdicated in 1795 and died in 1798.

<sup>3</sup> H. 427, f. 461.

<sup>4</sup> Below, p. 592.

happily in the event not realised, greatly lowered his spirits. Death, which had hitherto altogether spared his family circle, now began to make gaps in it. In July 1759, Charles Yorke's young and amiable wife, together with her infant, were carried off by sudden illness, and it was some time before the grief-stricken husband regained sufficient spirits to appear in society and go through his public duties<sup>1</sup>. The next was the sudden and unexpected death of Lady Anson on June 1, 1760, who, writes the second Lord Hardwicke, "was carried off by a malignant fever... the first alloy to this scene of domestic felicity;...many," he adds, "(God knows) [have] happened since—and some irrevocable and almost incomprehensible—it was a heavy blow on all of us; she was the life and soul of our societies, was always desirous to please and capable of doing it. Whatever failings she had (as none are exempt), were totally eclipsed by her superior accomplishments, and she had a fund of humanity and benevolence in her temper, which exerted itself in serving many worthy and distressed objects. Indeed, as far as she was able, she made it a rule of conduct to oblige all who came in her way, and justly to provoke or offend none. Lord Anson bore this loss with great philosophy, though he was deeply afflicted by it." "The storm and passion of his grief," wrote Lord Hardwicke to the Duke of Newcastle, "and the impression of his loss far exceeded what I could have imagined, especially from him, who has naturally a certain firmness and composure." "His house never could forget," continues her brother, "the cheerful and lively sunshine (if I may use the expression) which she spread over it....I shall ever remember with pleasure and gratitude the many happy days and hours which I spent in that society<sup>2</sup>." "An understanding," writes Miss Catherine Talbot, with still warmer appreciation of the deceased, "the most superior, the most comprehensive, directed by a goodness of heart the most sincere and indefatigable, enlivened by spirits the most amiably gay and active, adorned by every accomplishment, every day of their lives must make each feel their own and the general loss more heavily....The Archbishop has been with them daily....This awful stroke was very sudden, a confinement indeed of ten days, but no fears till Saturday, and even Saturday night very few....I will not go on with the particulars of the family distress....This morning my Lord saw me by his own desire; we were both much affected. Poor man! He

<sup>1</sup> Below, pp. 590-593.

<sup>2</sup> N. 222, f. 30; H. 80, f. 1; H. 28, f. 44; below, pp. 593-6.

had been with the King, who received him very graciously; but at this time they were very unfit company for one another. I cannot ...witness these scenes unaffected, but I am not affected painfully; for I cannot help looking beyond them, and seeing within a very few years all these good people restored to a much happier union than that which this awful stroke has interrupted....Could you see them, their conduct would add to the love and esteem you feel for them<sup>1</sup>."

On September 19, 1761, Lord Hardwicke suffered another severe stroke, which is thus recorded by himself: "At 25 minutes after ten in the morning died my dear Wife, Margaret, Countess of Hardwicke, after having lived together in perfect harmony 42 years, four months and three days<sup>2</sup>." "Poor Lady Hardwicke," Mrs Carter records of her in December 1760, "has been confined by an arm and hand burnt by means of her ruffle" ("which I suppose," wrote Sir Joseph Yorke, "was owing to her holding the candle between her and the book, as is her ordinary custom<sup>3</sup>"). "She is getting better, and it is delightful to see how charmingly she supports her spirits and passes over many lonely hours that must be embittered by remembrances of our lost angel, if they were not softened by resignation<sup>4</sup>." "Her deafness makes her uneasy," wrote Lord Hardwicke to Lord Royston, "and wish to avoid company, because she will fancy she is troublesome; tho' I make it my business to persuade her of the contrary as much as possible<sup>5</sup>." "She was greatly broken by infirmities," writes her eldest son, "but retained a strong sense, a quick comprehension and a sincere piety to the last. Her loss deeply affected my Father, as he had lived with her in the strictest confidence and harmony; and he expressed his grief in an elegant Latin epigram, the next time he went to Wimpole *alone*, without his usual companion<sup>6</sup>."

A Wimpole iter faciens uxorem nuper morte abreptam alloquitur Junii 15<sup>o</sup>. 1762.

Conjuge dilectâ privari dùm dolet, heu! me

Dùm dolet in viduo nocte jacere toro!

Te rursùm sociam thalami rediisse sub astra

Exopto, notae te comitemque viae<sup>7</sup>.

<sup>1</sup> *Letters to Catherine Talbot* (Pennington), i. 467, 470; see also the verses on Lady Anson's death addressed to her father by David Mallet.

<sup>2</sup> H. 900, f. 1.

<sup>4</sup> *Letters to C. Talbot*, i. 485.

<sup>3</sup> H. 17, f. 255.

<sup>5</sup> H. 4, f. 146.

<sup>6</sup> H. 80, f. 1; her will, H. 881, f. 23. She left £3500 apiece to her daughters and younger sons and expressed a "desire to be buried at Wimpole quite private."

<sup>7</sup> H. 11, f. 322.

It was his fate, he lamented, *nigra veste senescere*. The death of the old King, in October 1760, had been a further severe blow to Lord Hardwicke and his family; but this event had an influence so far reaching upon domestic politics and the progress of the war, that its consequences must be reserved for the subject of another chapter.

## CORRESPONDENCE

*Lord Chancellor to Captain James Gunman, R.N.*

[H. 364, f. 295; MSS of Martyn Mowl, Esq<sup>r</sup>.]      POWIS HOUSE, April 3, 1744.

SIR,

I ought to make much apology for the trouble I am now giving you which is attended with so much freedom, especially in an affair of so private and delicate a nature. I confess I have no pretence to interpose in it, and can only justify myself by that ancient friendship which has so long subsisted between my family and yours, and makes me interest myself in everything that nearly concerns their happiness and welfare.

I saw lately a person who came from Dover of whom I inquired of course concerning the health of our friends and the news of the town. In answering to common inquiries of this kind, he told me that it was reported there that you were going to be married to a very young widow of that place, greatly disproportioned to yourself both in years and rank. As I had always the best opinion of your prudence, I treated it as an idle rumour without foundation, till he assured me it was believed to be a serious affair even by those who wish you extremely well. Notwithstanding all this I continued doubtful and still do so, but as I am firmly persuaded that if what has been said should prove true and take effect, it would be attended with very inconvenient and unhappy consequences, not only to your children but yourself, I could not restrain myself from taking the part of a friend, however disagreeable it may be to you in this instance, and telling you my thoughts upon it.

I beg you would consider, my good friend, that such matches at your time of life generally prove extremely unfortunate.

The consequences of great disparity of years are augmented and aggravated by time, and grow more uneasy to the parties. You have children, so has she. Great jealousies will probably



arise from thence, distractions and feuds in your family, drawing different ways, as their separate interests lead them.

You must expect that these uneasinesses will finally fall upon and centre in you; and as it is natural your new wife may be contending for the interests of her own children, she will strive to gain more influence as old age and its concomitants may grow upon you; and everything which they acquire your children will think themselves wronged and defrauded of.

This may not only be accompanied by great uneasiness in your life-time but probably, as is often the case, with vexatious and expensive lawsuits after your death.

Your daughter in particular (of whose merit I have heard much commendation) will probably be a very great sufferer. Besides, when mothers-in-law and daughters are nearly of an age, it is usually the source of great disquiet in families.

I have now told you my mind, and rely on your own good sense and candour to forgive me, since you must be convinced I could have no other motive to give either you or myself this trouble, but that I am truly, Sir,

Your most faithful friend and humble servant,

HARDWICKE.

[In reply (f. 297) Captain Gunman assures the Chancellor that the report has no foundation.]

*Lord Chancellor to the Rev. Philip Doddridge, who had written desiring that Church preferment might be given to Dr Stonhouse, a physician, who contemplated entering holy orders<sup>1</sup>.*

[H. 242, f. 172.]

POWIS HOUSE, October 18th, 1748.

SIR,

I received the favour of your letter relating to Dr Stonhouse, a physician at Northampton; and am extremely obliged to you for the many polite and kind expressions of your good opinion and regard for me. I flatter myself you do me justice in thinking that it is my desire and endeavour to introduce worthy and deserving men into such preferments in the Church, as are entrusted to my care. As to Dr Stonhouse, he is entirely unknown to me; but I dare be confident from your own very good character, that the

<sup>1</sup> f. 166. Philip Doddridge, D.D., the eminent Nonconformist divine (1702-1751), a correspondent of both Lord and Lady Hardwicke.

account you give me of him is such as you are satisfied in your conscience he deserves. But it is incumbent upon me to acquaint you, that I have always observed it as an invariable rule never to make promises of any benefices to laymen, bred up to and exercising other professions, nor to give them, before they have received holy orders, hopes or encouragement to expect any benefice from me. My reason is, that such hopes or encouragement when given, might not be made use of to prevail with, or induce, any of the Bishops to give orders, whereas I think they ought to be left to their own unbiased judgment in conferring that sacred character. If I should in any instance depart from this, I know it would lay me open to many inconvenient solicitations; and therefore I trust your known candour will excuse me for not entering further into this affair and for adhering to a rule, which I have found by experience to be right....

*Stanislas, Count Poniatowski, afterwards King of Poland, to  
the Hon. Charles Yorke*

[H. 286, f. 109.]

VARSOVIE, 7th January, 1755.

...Mettez moi aux pieds de votre respectable Père. Je n'oublierai jamais que j'ai vu en lui l'homme de l'Europe le plus équitable, le plus judicieux, le plus occupé, et pourtant l'homme de l'humeur la plus douce, la plus accessible; et qui, au milieu de ses fonctions dans la Chambre Haute et dans la Cour de Justice, n'a pas dédaigné de jeter un regard gracieux sur un jeune étranger...

*William Pitt to the Hon. Charles Yorke*

[H. 82, f. 168.]

PAY OFFICE, May 25th, 1755.

DEAR SIR,

As I am going to-morrow to Sunning Wells, give me leave to assure you in a line of what I cannot now have the honour to do in person, my sincere felicitations and best wishes for your happiness<sup>1</sup>. May you find matrimony just what I have found it, the source of every comfort and of every joy. Believe me, with perfect esteem, and respect, dear Sir,

Your faithful friend and most humble servant,

W. PITT.

<sup>1</sup> Above, p. 574.

*Lord Chancellor to Lord Royston*

[H. 3, f. 321.]

WIMPOLE, *September 4th*, 1755.

DEAR ROYSTON,

Your kind letter of the 15th August<sup>1</sup> afforded me some comfort, whilst I was at London last week....I immediately communicated it to your mother who, as well as myself, received the news of Lady Grey's breeding with the most sincere joy. We heartily congratulate you both, and think it the greatest private consolation that could happen to us, in the midst of these public troubles. May God preserve her and bring it to a prosperous issue. We all rejoice in hearing that her Ladyship is so well, but cannot help being anxious, as you are, about the distance she is at from home, and the long journey she must go through<sup>2</sup>. I have considered with your mother whether any advice could be given from hence, and if anything particular had occurred, would have sent it by a flying packet to Taymouth; but as that is not the case, and as you propose to set out for Edinburgh on this day sen'night, I thought it just as well that my letter should meet you there. As Lady Grey is at present well in her health, you judge right that the only consideration is how to bring her back in the safest and easiest manner, so as to be least liable to accidents. You certainly did right in immediately resolving that her Ladyship should lay aside all further journeys of pleasure, and travel no more than is absolutely necessary. We think it very happy, under these circumstances, that she is with Lady Breadalbane, who has so much prudence and some experience of her own. Your mother concurs in opinion that it was best to suspend your journey for a fortnight from the time you writ, because that might give time for the most dangerous period for miscarriage to pass over. If she continues well, all the rest will consist in using extraordinary care and attention; to travel by very easy journeys; to avoid taking cold as much as possible; and, as there has been so much rain, to keep a servant or some other person always before to look out for any deep waters or other dangerous places upon the road, which may be attended with surprise, if they have no other ill consequence. Whether a coach or post-chaise is best for her, I don't know enough of the road to be able to determine; but those who have had experience of it at all seasons, can. A coach would probably be securest from cold;

<sup>1</sup> f. 318.<sup>2</sup> Lord Royston and Lady Grey were paying some visits in the North and Scotland.

and if that should be thought most proper, it may be had at Edinburgh. It is generally reputed that there are good physicians at that place, and your mother submits it to Lady Grey's and Lady Breadalbane's discretion whether it would not be proper to take some advice or directions from one of them, before you proceed further on your journey, though tampering in such cases is always wrong. Nothing further occurs on this agreeable and important subject, except to add our fervent prayers for the best health and most prosperous journey to you both. Be assured nothing can possibly give us greater pleasure than to embrace you both here perfectly well<sup>1</sup>....

Most affectionately yours,

HARDWICKE.

[On September 20, 1756 (H. 5, f. 190), Charles Yorke writes to his father] At seven o'clock it pleased God to take to himself my dear little child, to our great affliction....I resign myself to the will of that wise and good Being, who gives and who takes away, and always for the most gracious purposes.

*Lord Chancellor to the Hon. Charles Yorke*

[H. 5, f. 194.]

WIMPOLE, *Sept.* 20, 1756.

DEAR CHARLES,

Your letter by young Appleyard has given us the greatest affliction. We sincerely condole with you and Mrs Yorke on the loss of the dear little girl, which was a surprise to us, notwithstanding your intelligence by yesterday's post. It becomes us to submit with resignation to the Providence of God in such circumstances in the manner you very rightly state it. He is able, and if He sees it fit for us, will make it up to us fourfold. It was my misfortune to lose my first child something earlier. Thanks to the Divine goodness, it has been abundantly made up to me and so, I hope, this loss will be to you. Your mother and I desire to be most affectionately remembered to dear Mrs Yorke, with the most cordial wishes for her health and support under this trial. We are sorry to be at so great a distance from you on this occasion; and if it will be of any the least comfort or use to you for either of us to come to Town, are most desirous to do so....As to your question about the interment of the poor babe, I desire it may be at Wimpole....

<sup>1</sup> Lady Grey gave birth, February 9, 1756, to another daughter, Mary Jemima, who afterwards married the second Lord Grantham; and she had no more children.

*Earl of Hardwicke to the Mayor and Corporation of Dover in answer to applications for his support in the improvement of Dover Harbour.*

[H. 344, f. 378.]

POWIS HOUSE, March 5th, 1757.

MR MAYOR AND GENTLEMEN,...

I beg you will be assured that nothing shall ever be wanting on my part, that may be for the prosperity and advantage of my native town. There is nothing that I have more sincerely at heart; and I look upon the improvement of Dover Harbour not only in this light, but as being of general utility to the Nation. You may therefore depend on my utmost zeal and endeavours, and those of my friends, to forward what you so much desire; and though I fear this is not a favourable opportunity to expect to recover the whole tonnage<sup>1</sup>, which I much wish, yet we will not fail earnestly to promote your interest and service as far as the nature and circumstances of the affair will possibly admit.

I am, with the greatest truth and regards,

Mr Mayor and Gentlemen,

Yours etc.

[HARDWICKE].

*Earl of Hardwicke to the Solicitor-General* •

[H. 5, f. 220.]

MOOR PARK, June 2nd, 1757.

DEAR CHARLES,

I do most joyfully and heartily congratulate you on dear Mrs Yorke's safe delivery, and the birth of your son<sup>2</sup>. God grant that an event so interesting to me and my family, as well as yourself, may prove happy in every respect. You were born whilst I was Solicitor-General. *Sit omen felix faustumque*. All your friends here desire to join their sincere compliments of congratulation to yourself and Lady, and Lord and Lady Egremont, who are now in the house, that their's may be added. We had a flying report of this good news yesterday morning by Lord Anson's

<sup>1</sup> Harbour dues. See ff. 338 sqq.

<sup>2</sup> Philip, afterwards third Earl of Hardwicke, K.G. and Viceroy of Ireland. Born May 31st.

porter, and waited impatiently for the confirmation of it by your letter by the post. All the circumstances have answered our wishes, and we think Mrs Yorke managed the affair with great adroitness and *savoir faire*; for which reason your letter was shown to my Lady Egremont for a precedent, as she seems not to be far off from putting it in practice.

Pray keep us informed how the Lady and young gentleman go on....

I hope you will settle an administration before my return to town, which is fixed for Monday at dinner<sup>1</sup>, and suppose you will see a crowded Levee at Savile House on Saturday. God bless you and yours, and believe me,

Always your most affectionate Father,

...

HARDWICKE.

*Earl of Hardwicke to Lord Royston*

[H. 3, f. 381.]

POWIS HOUSE, *July 30th, 1757.*

...Suffer me to add a word of advice to yourself. Pray try to make riding familiar to you again, which is the best exercise you can take. If you don't like your new horse, send over to Wimpole either for my bay mare or the New England pad, either of which would carry you with great ease and safety; and I can very well spare either of them from Wimpole where I have my grey mare. But it is my sincere opinion that you should use more exercise than you do; and if riding will not do, bowl a little while every day, which you will find very useful. I say this from an affectionate regard for your health...

[On October 23, 1757 (H. 5, f. 237), Lord Hardwicke writes to Charles Yorke on the latter's happy prospects. A son and heir had been born to him, and as Solicitor-General he had made the first step towards high office.] You have a great scene open before you, and if it shall please God to preserve your life, and also to preserve this country (for both of which I daily pray) will, I make no doubt, make a great figure in it. *Macte esto virtute, fili*; and may you go through the honours and advantages of your profession, at present the best this country affords, with as good reserve of health as it has pleased Providence to afford me. I look upon this as one of the greatest blessings. Indeed, I have chosen to continue

<sup>1</sup> Above, pp. 367 sqq.

my retirement from office, as Lipsius says of Tacitus, *taedio temporum ac otii desiderio*. I hope the times will mend so much that the former will never be a reason to weigh with you....

*Colonel Gansel to the Earl of Hardwicke*

[H. 247, f. 303.]

November 14th, 1758.

MY LORD,

If anxiety was the first cause of my bold intrusion, its duty now that guides my pen, looking up to your Lordship as to the Earl Marshal in times of ancient chivalry; and tho' report is pleas'd to be as favourable to me as I cou'd wish, yet the proof of it shou'd appear before your Lordship. The enclos'd I hope will evince it.

As I pray to God that this may be the [last ?] affair of the kind I may be concern'd in, so I protest to your Lordship that, so far from affecting reputation in the private field, that I esteem it shocking to humanity; but if from custom and education it was absolutely necessary to repair to it on the late occasion, if, in your Lordship's opinion, I have acted with decent propriety and shewn that my heart was actuated by motives superior to the fear of its dissolution, I am happy.

With the most sincere respect and esteem, I have the honour to remain my Lord, your Lordship's most oblig'd, most obedient and most humble servant,

W. GANSEL.

*Earl of Hardwicke to Colonel Gansel*

[H. 247, f. 305.]

POWIS HOUSE, November 15th, 1758.

SIR,

You do me a great deal of honour by appearing to lay so much weight upon my sentiments. I am the most improper judge of chivalry in the world, having been bred up in legal notions, too regular and strict to approve of such methods of deciding disputes. I am glad to find that your own judgment dictates the same thing to you; but as you have found yourself obliged to comply with this ill-grounded and unhappy custom, I heartily rejoice that worse consequences have not followed from it, as well as that the opinion of all those, with whom I converse, is greatly in your favour upon the whole transaction.

Enclosed I return your papers, and am with great regard,

Sir, etc.

[HARDWICKE].

[On March 18, 1759 (H. 5, f. 250), Lord Hardwicke writes to Charles Yorke strongly dissuading him from a project of giving up the law for political office, apparently the chancellorship of the Exchequer, in succession to Mr Legge. Nothing could be more against his interests.] To quit your profession, in which you make so considerable a figure and have such solid and stable advantages, for so precarious and embarrassed a situation in such precarious times !...

*Earl of Hardwicke to the Rev. Dr Freeman*<sup>1</sup>

[H. 247, f. 373.]

GROSVENOR SQUARE, July 10th, 1759.

REV<sup>d</sup>. SIR,

Your absence...from home may have prevented your hearing of a bad distemper which has lately distressed Mr Yorke's family. It appeared at the beginning of the last week, in one of the servants and about the same time in the little girl, who being just then cutting teeth, the child's case could not at first be easily distinguished from the symptoms of that disorder. On this day sev'nnight it was pronounced by the physician to be a putrid fever, attended with a sore throat which is pretty frequent at this time. The servant was immediately sent out of the house and the boy was sent to Acton. On Wednesday morning Mrs Yorke complained a little of her throat, which was soon found to be the same distemper. Two or three more servants were attacked with it, and immediately sent out of the house to lodgings. All possible assistance was procured, and Dr Heberden, Dr Addington, Dr Watson and Mr Hawkins attended the family. As it has been observed to be most fatal to young children, the poor little girl died on Sunday morning, which we have no reason to think Mrs Yorke ever knew. As to herself, all the symptoms went on favourably ; and tho' the faculty would not pronounce her quite out of danger till they should see this day over, they declared everything to go on in the best manner. Yesterday she appeared to be better than at any time before ; and tho', in the case of so precious a life, we could not but be under anxieties, yet last night we were, from the appearances and the judgment of the physicians, more easy than at any time before. She slept well from about 11 till half an hour after 12 ; and now I come to the fatal catastrophe, which overwhelms me and all my family with grief and can never be

<sup>1</sup> Uncle to Mrs Charles Yorke.



sufficiently lamented. About half an hour after 12 she waked in a violent delirium. Mr Yorke, who would continue in the house with her, was forthwith called; he sent for Dr Heberden and Dr Watson, who came immediately, but the delirium continuing and she incapable of taking anything, it pleased God to take this most amiable young woman to himself about two o'clock. This unexpected stroke was like a clap of thunder to me and Lady Hardwicke this morning. Poor Mr Yorke is the most inconsolable person that I ever saw, and what both he and Mrs Freeman feel is not to be described.

During the hours (?) that this dear creature had made my family happy, she had gained the affection of every branch of it, and the grief they felt could not have been exceeded for a child or sister of their own. Such sweetness of temper and so many virtues are seldom known to meet in one person; but she is gone to receive the reward of them.... My chief consolation is that no care or attention has been wanting; and for the dear pledge she has left behind her, he continues very well, so far happy that he is incapable of knowing his loss. May he live long to show forth his mother's excellent qualities, and to preserve the connection between our two families. Permit me at the same time to recommend him to your kind protection.

Mr Yorke would have writ but is incapable of it....

*Solicitor-General to Lord Royston*

[H. 12, f. 283.]

[1759.]

...My brother John is so good as to accompany me for the next week [to Moor Park] to assist me in relieving the affliction of my mind, which often seizes upon me in strong fits and agonies of tears, unless diverted by reading or restrained by the decency and respect due to those I converse with. Indeed, my dear brother, I have lost the great source and support of all my cheerfulness at home and my happiness for life. I pray God to enable me to bear this calamity with strength and calmness of mind<sup>1</sup>....

<sup>1</sup> In his will he renders thanks to God "particularly for that greatest of all blessings conferred upon me in my marriage with my most amiable wife Catherine, whose artless manner, sweet temper, tender, generous and disinterested kindness, unaffected piety to God, and habitual cheerfulness (the happy result of the purest innocence and the most steady principles of religion and virtue), made her the delight of all who knew her." (Seward's *Biographiana*, i. 575.)

*Earl of Hardwicke to Lord Royston*[H. 4, f. 88.] GROSVENOR SQUARE, *July 18th, 1759.* Wednesday afternoon.

DEAR ROYSTON,

Amidst all the severe strokes of Providence, which have fallen upon me of late, none has more affected me than the letter your servant brought concerning poor Lady Bell. I was then very ill myself, and the difficulty there was in procuring a proper physician to go down to Wrest in a proper time, much increased your mother's and my distress. [He is himself somewhat better.] As to Lady Anson, she is not yet abroad; but it is agreed that she is nearly well, and her throat in a manner quite so. Indeed I believe what illness remains upon her is more from her mind and spirits than from her body, for her spirits are such as make her feel everything very strongly. The news of Lady Bell had affected her extremely.

I hope in God we shall all get well in a little while, but His will must be submitted to; and tho' from His wonderful goodness, my life has been a series of prosperity hitherto, we must not expect always to receive good things at His hand and not evil...

6 o'clock. I had writ thus far before my little dinner, and now a thousand thanks to you for your very kind letter by the post. I trembled to open it, but it proved when opened an excellent cordial and will, I believe, do me, at least, as much good as any of Dr Addington's prescriptions. Your mother and I have been in prodigious anxiety....

Most affectionately yours,

HARDWICKE.

Charles is still at Richmond, and was yesterday as well as could reasonably be expected after his great shock\*....

*Solicitor-General to the Hon: Mr Justice Wilmot<sup>1</sup>*

[H. 287, f. 284, copy.]

*August 15th, 1759.*

DEAR SIR,

I thank you much for your very kind letter from Salisbury. The friendship of such as you, which has always been sincere and

\* 1774. It is impossible upon reading this letter not to reflect upon the many other severe dispensations which have befallen our family since the date of it, and rapidly, for the last 10 years. Fiat Voluntas Dei. H.

<sup>1</sup> Sir John Eardley Wilmot (1709-1792). A distinguished judge; justice of the King's Bench 1755; one of the commissioners of the Great Seal on Lord H.'s retirement 1756, and later, Chief Justice of the Common Pleas.

affectionate, is one of my greatest supports. You, who knew my happiness, will not wonder that I feel the loss with a sensibility equal to the weight of it. She had a manner so amiable and artless, a sweetness of temper so unalterable, a desire of improvement with a constant progress in it, affections so tender and generous and an innate goodness of heart and fixed sense of religion with so much cheerfulness, that I must ever lament her death as the greatest affliction that could befall me. The only solid comfort is to be found in a principle of absolute resignation to the will of that wise and good Being, who orders for the best when we least imagine it. Sometimes, even here, the events of a day shew it, when the reasoning of a whole life could not discern it; and oftener the discovery is reserved for our restoration in another and a better state of existence. With these sentiments I shall endeavour to compose my mind. I am always, dear Sir, with the utmost truth and respect<sup>1</sup>,

Your faithful friend,

C. YORKE.

*Lord Sondes to the Duke of Newcastle*

[N. 221, f. 265.]

CANTERBURY, May 25th, 1760.

...The Dean of Canterbury died about an hour ago...The people seem to wish you would send us a York to Canterbury, as the people seem in Kent to have a veneration for Lord Hardwicke...

[In a letter of May 31st (N. 221, f. 385) Lord Hardwicke observes that he has seen his son James named in the papers for the deanery of Canterbury. He is, however, not so unreasonable and hopes that of Windsor may be offered to him later.]

*Lord Anson to the Earl of Hardwicke*

[H. 11, f. 427.]

ADMIRALTY, May 31st, 1760.

I have the greatest satisfaction in acquainting your Lordship that Lady Anson is quite out of danger, and tho' her rash is not all out, she is easy and, to a degree, has recovered her sleep and spirits and desires me to make her dutiful acknowledgements and thanks for your Lordship's very kind and affectionate wishes, and she promises to be very careful of herself for the future.

...Since I began this letter, Doctor Wilmot thinks Lady Anson has rather more fever than she had in the morning which, he says, is usual in these cases in the evening, and imagines there is more rash to come out.

<sup>1</sup> Cf. *Letters from an Eminent Prelate*, 220.

I don't understand their jargon and always feel when I have any of them in the house, as I always did in my ship when I had a pilot; being ignorant myself, I always doubted whether my pilot knew as much as he ought to do; but in both cases there is nothing else to trust to. I am, my dear Lord, your ever faithful and affectionate Servant,

ANSON\*.

*Duke of Newcastle to the Earl of Hardwicke*

[N. 221, f. 429; H. 71, f. 221.]

KENSINGTON, *June 2nd*, 1760.

MY DEAREST, DEAREST LORD,

My heart is too full, and my affliction too great to suffer me to conceal from your Lordship what I feel for the severe stroke which you and yours have had, the loss of the best daughter and one of the best of women. May Providence bless you long with the happiness, health and prosperity of those who remain. I will trust in God that that strength of understanding, with which you have so often assisted others, will now upon this great trial be of use to yourself. Could anything that can come from others be of any assistance to you, it would and ought to be the most tender, the most gracious and unaffected concern which His Majesty, almost the moment I came into the closet, expressed for your Lordship, your loss and particularly also for poor dear General Yorke, and ordered me particularly to assure your Lordship, Lord Anson, and General Yorke of the sincere part he took in it. [The King had promised the deanery of Windsor to James.] I dared not acquaint the Duchess of Newcastle last night with the melancholy news, but I know too well the impression it will make upon her.... May I beg your Lordship would say everything that a sincere and devoted heart can say from me to my poor Lady Hardwicke, whom I pity from the bottom of my heart. I am, if possible, more than ever yours,

HOLLES NEWCASTLE.

[Lord Hardwicke sends his sincerest thanks for the Duke's kind letter on June 3 (N. 221, f. 470), and on the next day writes again.] \*

[N. 221, f. 476.]

GROSVENOR SQUARE, *June 4th*, 1760.

MY DEAREST LORD,

Your Grace is extremely good and kind, and of all the friends I have in the world, I should be pleased to see you; but in

\* N.B. This was a very unhappy affair and a loss which could not be replaced. We thought Dr W. had not shown his usual sagacity in the illness. Till the death of this poor lady our family had gone on in an uninterrupted flow of worldly prosperity; since that era we have had our share of private disasters. God's will be done. H. [Lady Anson died the next day.]

truth I have not yet acquired firmness enough to see anybody, and I am this day to go to poor Lord Anson, and a mournful interview it will be. I dread it, and shall from the consequences of it, be the less fit to receive anybody else. I hope your Grace will forgive me for dealing thus freely....If your Grace shall be pleased to send me the arrear of letters, I will endeavour to read them over to-morrow morning with the poor attention I am at present capable of....

I am, my dearest Lord,

Ever yours,

HARDWICKE.

[He writes to Lord President Dundas June 12 (G. W. T. Omond, *Arniston Memoirs*, 163)] Providence requires that one should struggle with patient resignation under such trials.

*Major-General the Hon. Joseph Yorke to the Earl of Hardwicke*

[H. 10, f. 39.]

HAGUE, June 10th, 1760.

...Your Lordship knows how dearly I loved that sister, how much I owed her, and how intimate we had been from our youth upwards. The loss of her, therefore, quite stupefies me and makes my grief too big for utterance. In the midst of my anguish, however, my heart bled for the rest of my friends, and particularly for our parents and for her disconsolate husband, whose loss is indeed irreparable. May that Providence whose awful dispositions are above the feeble reach of mortals, support and comfort you under your distress and cease to afflict you further<sup>1</sup>....

*Duke of Newcastle to Major-General the Hon. Joseph Yorke*

[N. 222, f. 190.]

KENSINGTON, June 13th, 1760.

MY DEAREST FRIEND,

I received this morning your letter of the 10th<sup>2</sup>..., such a one as I expected from so just and so tender a heart as your own....The comfortable side is the universal and most uncommon justice done to the object of it and then, that God be praised, your family is all perfectly well. I have seen my best friend, your dear Father, twice. He was so good as to spend the evening with me last night at Newcastle House, and I can with truth say that he is

<sup>1</sup> Further letters from General Yorke on this subject, H. 17, ff. 135 sqq.

<sup>2</sup> f. 116.

perfectly well in his health, and suffers that greatness of mind to show itself and have its influence over himself. I saw also poor Lord Anson, who is as well as in his unhappy circumstances, (of which he is most sensible) one could expect. Another comfort you may have. I read part of your letter which related to the King to His Majesty. He would have been too much touched if I had read the whole. His Majesty showed the same concern for you he had done, was mightily touched with your expressions of duty and gratitude to him and said, "You know I always loved Yorke."...

*Earl of Hardwicke to the Duke of Newcastle*

[N. 225, f. 168.]

August 20th, 1760.

...[He wishes something could be found for Jack] to put him in a way of business which I will venture to say he is very fit for.

[In another letter to the Duke, of August 22 (f. 232), he writes] I have long had it in my mind but was afraid of being troublesome. Jack was for several years very unfortunate in his health, which stopped his progress in his profession. But he has not been idle, is very honest, has good parts, good temper and is very well behaved. He is very dutiful to me (as indeed they all are), but I have more of his company, which is a comfort to me. At the end of this Parliament, he will have sat there nine years by my good Lord Rockingham's generosity, which I hope will be continued to him. He has nothing properly from the Crown; for the small thing, which he has in the Court of Chancery, [was only formally the King's gift.] I don't mean to tease or press your Grace about this thing, but hope that by the end of this Parliament, something may be fixed upon. He is very capable of business; and if no notice should be taken of him, after having sat so long in Parliament, he will appear to be in the line of forgetfulness...

*Earl of Hardwicke to Lord Lyttelton*

[Phillimore, *Mem. of Lord Lyttelton*, 630.]

GROSVENOR SQUARE, October 17th, 1761.

MY DEAR LORD,

Under the greatest afflictions, it is some degree of consolation to be kindly remembered by our most valuable friends at a distance. In this light I consider the honour your Lordship has done me by your most obliging letter, which demands my best

thanks. I am too sensible how little pretence I have to any of those great qualities, which your partiality gives me ; but I have learned, both as a man and a Christian, to submit with humble resignation to the wise dispensations of Providence, however severe and trying. *Resigno quae dedit...*

*Earl of Hardwicke to the Duke of Newcastle*

[N. 254, f. 383.]

June 17<sup>th</sup>, 1762.

...The friendship with [which] you are pleased to honour me and my family induces me to trouble you with an affair of moment to it, and which I must stay in town to finish. I am going to marry my youngest son, the Dean ; and perhaps you may be a little surprized when I tell you to whom. It is to Bishop Maddox's daughter and only child. Her mother is a very worthy lady, and the daughter a very deserving girl ; and tho' she has no money portion, is a great fortune. She has a real estate of £1500 per annum, £1200 per annum in Gloucestershire, which the Bishop purchased of the Dowdeswell family, and a fee simple house in Arlington Street of £300 per annum. All this is settled to my satisfaction, and I hope in God it will succeed well, and think it will be completed in a very short time. I shall then have done with the world ; for as to Joe, he is as yet heterodox, and when he thinks of marrying, must take care of himself...

*Earl of Hardwicke to the Duke of Newcastle*

[N. 255, f. 164.]

June 30<sup>th</sup>, 1762.

...The Dean of Lincoln's affair is completed, and the knot was canonically tied yesterday morning at St Martin's Church. In the style of the newspapers, the new married couple set out immediately for the *Dean's seat*, that is his parsonage house at Reading. I hope in God it will prove, as there is all the reason in the world to augur, happy....

*Earl of Hardwicke to the Attorney General*

[H. 5, f. 306.]

WIMPOLE, September 26<sup>th</sup>, 1762.

DEAR CHARLES,

...This has made me perfectly happy, and I most devoutly return thanks to Providence for having prospered this

interesting operation thus far<sup>1</sup>, and most cordially congratulate you upon what, I hope, I may call the perfect recovery of the dear little boy, and the future ease you will probably receive from it. Pray give my kindest love and blessing to him, and tell him from me that he has been for some time a *little man*, but this will make him a *big man* and enable him in a little while to ride a pony.

Your brother, Lady Grey and the girls, came hither yesterday to dinner. They all desire me to add their sincere congratulations to you....

Lady Margaret has announced that she and Sir Gilbert intend to be here on Wednesday evening, and the Dean and Deaness I hope not long after, tho' I do not exactly know their time. So you see the plenipotentiaries are assembling apace, and as this important and anxious affair is now, I hope, well over, I will live in expectation of seeing you here again for a few days before the vacation ends....

<sup>1</sup> Charles Yorke's little son had been inoculated for small-pox, naturally an occasion of great anxiety.

END OF VOL. II.













